TEACHING PEACE AS A MATTER OF JUSTICE

TOWARD A PEDAGOGY OF MORAL REASONING

DALE T. SNAUWAERT

PREFACE BY BETTY A. REARDON

PEACE STUDIES: EDGES AND INNOVATIONS

This book explores the normative dimensions of peace studies and peace education through the lens of moral and political philosophy. The purpose is to explore the idea of peace as a matter of justice, and to articulate a pedological framework for the development and exercise of citizens' capacities for moral reasoning and judgment regarding potential responses to the basic questions of justice, including resisting injustice. The just conditions necessary for peace are contingent upon the informed participation of democratic citizens who are capable of becoming dynamic agents of justice. The development of citizens' capacity for moral reasoning and judgment is of paramount importance, for it constitutes a necessary condition for the realization of justice and peace on all levels of human society, from local to global. The book will be of interest to both students and all those interested in thinking about peace as a matter of justice.

"This book is an essential work in peace and justice studies education, or in the broader sense, peacelearning ... that should be on the shelves of every peace educator. Snauwaert helps to keep us afloat with ... a model of a pedagogy of hope, brilliantly illustrated as he invites learners into a process of the conceptualization and design of a moral community based on essential ethical principles. Such is the pedagogy that all peace educators should be practicing in the face of present moral crises. Snauwaert's work will inspire and facilitate that practice."
Betty A. Reardon

"With groundbreaking clarity Professor Snauwaert leads readers toward understanding justice in society. In doing so, he articulates how moral reasoning provides the method for a deep pedagogy of justice and peace. Pedagogical recommendations for both graduate and undergraduate courses make this a must-read foundational text for peace studies, peace education, and foundations of education courses, as well as for anyone interested in the philosophical, political, and social dimensions of peace and justice studies."
Dr Janet Gerson

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Teaching Peace as a Matter of Justice:

Toward a Pedagogy of Moral Reasoning

By

Dale T. Snauwaert

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Toward a Pedagogy of Moral Reasoning

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To Betty A. Reardon
and
Mary M. Darbes

TABLE OF CONTENTS

Acknowledgements xii

Preface Betty A. Reardon xiii

Introduction 1
1. Moral and Political Philosophy: Reconciliation 2
2. The Organization and Summary of Chapters 6

Part 1: Peace as a Matter of Justice and Moral Reasoning

Chapter One 14
The Concept of Peace
1. The Nature of Violence 15
1.1 Direct Violence 16
1.2 Structural Violence 17
1.3 Cultural Violence 19
1.4 Two Examples of Structural and Cultural Violence 21
2. The Nature of Peace and the Presence of Justice 23
3. Rights and Duties as Matters of Justice 25
3.1 The Content of Rights 29
3.1.1 Negative and Positive Liberty 29
3.1.2 Social and Economic Rights 32
3.1.3 The Interconnection of the Three Kinds of Rights 33
4. Spheres of Peace 34
5. Summary 36

Chapter Two 38
Justice and Normative Justification: An Appeal to Moral Reasoning
1. Approaches to the Criteria of Normative Justification (55-68) 40
1.1 The Cognition of Moral Truth 41
1.2 Critique and Potential Alternatives to Moral Truth 43
1.2.1 Kant's Internal Consistency Categorical Imperative Procedure of Justification 44
1.2.2 Social Acceptance 46
1.3 Moral Reasoning 48
2. Elements of Fairness and the Criteria of Normative Justification 52

2.1 Equality 52
2.2 Recognition 54
2.3 Reciprocity 57
2.4 Impartiality 58
3. Public Justification and Judgment 60
4. Summary 63

Chapter Three 65
Teaching Peace as a Matter of Justice: A Pedagogy of Moral Reasoning
1. A Process-Oriented, Inquiry-Based Pedagogy 65
1.1 John Dewey 65
1.2 Paulo Freire 66
1.3 Betty Reardon 67
2. The Logical Structure of Peace Studies and the Pedagogy of Moral Reasoning 68
2.1 Fundamental Ideas 68
2.2 Methods of Inquiry 70
2.2.1 The Practice of Normative Justification 71
2.2.2 The Practice of Judgment 71
3. The Peace Constitution Project 72
3.1 Peace Constitution Basic Template 72
3.2 Structure of the Peace Constitution Project 73

Part 2: The Basic Questions of Justice

Chapter Four 76
Whose Security?
1. Political Realism 77
2. International Society 81
2.1 Democratic Peace and the Possibility of a Democratic International Society 84
3. Global Society and the Human Right to Security of Person 88
4. Summary 90
5. Peace Constitution Basic Template: Whose Security? 91

Chapter Five 92
Who Belongs?
1. Membership and Social Group Belonging 93
2. Ethno-Nationalism as the Standard of Membership 95
3. Shared Public Ethical Identity Standard of Membership 97

4. Principles of Immigration: On What Basis Should Outsiders be Granted Membership? 100
4.1 Economic Benefit 101
4.2 Political Asylum 101
5. The Question of Standing 102
5.1 Hierarchical Society 102
5.2 Egalitarian Society 104
5.3 Cultural Recognition and Tolerance 105
5.3.1 Cultural Recognition 105
5.3.2 Toleration 107
6. Summary 108
7. Peace Constitution Basic Template: Who Belongs? 109

Chapter Six 110
Whose Truth?
1.The Method of Tenacity 112
2.The Method of Social Acceptance 112
3. The Method of Rational Intuitionism 114
3.1 The Claim of Epistemological Certainty 115
3.2 The Question of Validating the Possession of Truth 116
4. The Method of Science 117
5. The Constitution of Knowledge and Principles of Justice 118
6. Disinformation and Propaganda: Threats to the Constitution of Knowledge 121
7. Summary 123
8. Peace Constitution Basic Template: Whose Truth? 124

Chapter Seven 126
Who Gets What?
1. Deontological Theories of Distributive Justice 128
1.1 John Rawls: Justice as Fairness 128
1.2 Robert Nozick: A Libertarian Theory of Distributive Justice 130
2. Teleological Theories of Distributive Justice 132
2.1 Utilitarianism 132
2.2 Sen and Nussbaum: Capabilities Theory 132
2.3 Michael Walzer: Communitarian Theory of Spheres of Justice 135
3. Summary of Conceptions of Justice 137
4. The Scope of Justice 138
4.1 The Common Relationship Standard 139

4.2 The Common Humanity and Universal Rights Standard 140
4.3 The Scope of Distributive Obligations 140
5. Distributive Justice and Environmental Sustainability 141
6. Summary 143
7. Peace Constitution Who Gets What? Basic Template 144

Chapter Eight 146
Who Decides?
1. The Coercive Power of Government 147
2. Democracy and Political Legitimacy 149
3. Threats to Democracy 154
3.1 Irrationality and the Banality of Evil 154
3.2 Identity-Based Political Polarization 158
3.3 Post-Truth and the Anti-Democratic Weaponization of Irrationality 160
4. Summary 161
5. Peace Constitution Who Decides? Basic Template 162

Chapter Nine 163
Principles of Corrective Justice and Resistance to Injustice
1. Moral Duty of Noncooperation with and Resistance to Injustice . 164
1.1 Ethical and Moral Foundations of the Duty of Resistance 167
2. Nonviolent Resistance to Injustice 170
2.1 Argument from Fallibility—Gandhi 172
2.2 Means-Ends Argument for Nonviolence 172
2.3 Withdrawal of Consent and Noncooperation 172
2.4 The Power of Suffering 173
2.5 Nonviolent Direct Action 174
2.5.1 Examples of Nonviolent Direct Actions 174
3. The Use of Military Force 176
3.1 Absolute Nonviolence 177
3.2 Realism 179
3.3 Jus ad Bellum 180
3.3.1 Just Cause 181
3.3.1.1 Military Humanitarian Intervention 182
3.3.1.2 The Doctrine of Preemption 182
3.3.2 Right Authority 183
3.3.3 Right Intention 184
3.3.4 Proportionality of Ends 185
3.3.5 Reasonable Hope of Success 185
3.3.6 Last Resort 186

3.3.7 Jus ad Bellum Summary 186
3.4 Jus in Bello: The War Convention and Humanitarian Law.. 187
3.4.1 Summary of Jus in Bello..... 192
3.5 Jus Post-Bellum..... 192
4. Summary..... 196
5. Peace Constitution Template: Principles of Corrective Justice.... 198

Summary and Concluding Reflection..... 201

References 205

Index..... 227

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The ethics and ontology of cosmopolitanism: Education for a shared humanity, *Current Issues in Comparative Education* 12 (2009): 14-22.

Human rights and cosmopolitan democratic education, *Philosophical Studies in Education*, 40 (2009): 94-103 http://www.ovpes.org/2009.htm.

The Bush doctrine and just war theory, *OJPCR: Online Journal of Peace and Conflict Resolution* 6, no. 1 (2004): 121-135. *http://www.trinstitute.org/ojpcr/6_1snau.htm*.

Cosmopolitan democracy and democratic education, *Current Issues in Comparative Education* 4, no. 1 (2001). *http://www.tc.columbia.edu/cice/vol04nr1/dsart1.htm*

Reclaiming the lost treasure: Deliberation and strong democratic education, *Educational Theory*, 42 (1992): 351-367.

PREFACE

BETTY A. REARDON

> "The condition of peace and justice is contingent upon the informed political participation of citizens who *are essential participants* in their pursuit."

With this sentence, Dale Snauwaert suggests a core purpose of peace education, preparing learners to be agents for achieving and maintaining a just peace, and points us toward a pedagogy for that purpose. This book is an essential work in peace and justice studies education, or in the broader sense, peacelearning, the preferred term of the Global Campaign for Peace Education, that should be on the shelves of every peace educator.

It is both a plea for and a vivid example of the need for conceptual clarity in the language of moral/ethical arguments, as in problem analysis and action-planning for peace. The precise articulation of ideas is a significant determinant of the efficacy of public discourse on all conflicted public issues. It implies that we must "know what we are talking about," prepared with adequate information on issue being argued, and achievement of mutual conceptualization of the problems at issue among interlocutors. This latter requirement calls for reasoned dialogue, a process tragically missing from present political discourse, making this volume essential reading for all concerned with present threats to democracy.

We live in a time in which those who dominate the public discourse and public policy-making "don't know what they are talking about." The discourse is characterized by ignorance of the fundamental facts of the issues at hand, disregard for truth, ridiculing scientifically valid information, disrespect for alternative viewpoints and denigration of human values. Snauwaert opens to peace education a path to responsibly confronting this problematic of democracy which now threatens not only democracy, but our survival and that of the planet that has birthed and sustained us. The development of the capacity for moral/ethical reasoning is the most promising route out of the amoral and immoral morass into which many world polities have sunken. Indeed, without a citizenry that has achieved and applied these capacities, I fear that we have little chance of surviving as a species, and certainly not as the reflective reasoning individuals and communities that produced human civilization.

To concretize and provide the basis for an inquiry into issues that comprise the problematic of any essentially immoral public order, Snauwaert provides us with direct and conceptually clear queries. These queries shed the light necessary to move forward into the confrontation of the differences in normative perspectives and worldviews that have produced the immoral morass. They are the queries that clarify the actual conditions of injustice in areas that should comprise the moral terrain of public policy making. The queries of "whose security," "who belongs," "whose truth" and "who gets what" raise the core questions of peace and justice, i.e., recognition of full personhood of all in a community, establishing agreement on normative standards and fair distribution of social goods. The query of "who decides" confronts the crucial ethical challenge of the locus of political power. In sum, the queries provide an essential framework for an effective pedagogy of moral reasoning and ethical judgment.

As Snauwaert asserts that peace is the presence of justice, that assertion is embodied in this inquiry into issues of human well-being and social justice. He invokes the principles enshrined in the international standards of human rights as articulated in the Universal Declaration and the Covenants on Civil and Political Rights and Social and Economic Rights. Responsible civil society clings to those standards as life vests in the roiling seas of authoritarianism and climate crisis into which the lack of public moral reasoning has cast us. Snauwaert helps to keep us afloat with an outline of an inquiry that is learner-centered and teacher-friendly, a model of a pedagogy of hope, brilliantly illustrated as he invites learners into a process of the conceptualization and design of a moral community based on essential ethical principles. Such is the pedagogy that all peace educators should be practicing in the face of present moral crises. Snauwaert's work will inspire and facilitate that practice.

Betty A. Reardon
May 2023

Note: I wish to express my gratitude to Janet Gerson who made it technically possible for me to provide this preface.

INTRODUCTION

The purpose of this book is to articulate a normative philosophical framework for the development of an educational approach to teaching peace as a matter of justice, specifically through the lens of moral and political philosophy. The inquiry pursued in the book explores a *normative* (ethical and moral), as opposed to an empirical, approach to peace studies and peace education. As both a research and educational enterprise, the field of peace studies is interdisciplinary; the exploration of conceptual frameworks of peace, threats to, and violations of peace, and processes of peace building, are multidimensional endeavors requiring an array of disciplinary lenses. As such, inquiry into the causes of violence and its consequences, methods of resolving and transforming conflict, methods of building peace, and the articulation and justification of the moral principles, values, and institutions of peace on multiple levels of the human experience (from the individual, to the national, international, and global) define the substantive focus of peace studies (Lopez 1999, 2008).

The conditions of peace and justice are contingent upon the informed political participation of citizens who *are essential participants* in their pursuit. An essential aspect of citizens' capability to participate in the pursuit of peace and justice is their ability to be not merely recipients, but *dynamic agents of justice*. It will be argued that furthermore, this capability is importantly grounded in developing citizens' knowledge and capacities for moral reasoning and judgment regarding basic questions of justice (including matters of *injustice*). Thus, the focus of this inquiry is to articulate a philosophical framework for, and a pedagogical approach to, the development of moral reasoning and judgment pertaining to basic questions of justice, including the knowledge of those questions and their normative basis.

From a normative perspective, peace is a basic social *good*. It is an ethical value of the highest order of importance, for without peace, the pursuit of a good life is severely limited. Peace is a necessary social condition for the pursuit of a good life. In order to have a higher order interest in peace as an ethical value, the normative dimensions of peace require careful consideration. Peace involves both a plurality of normative questions as well as a consideration of the nature of moral reasoning and judgment. These questions concern what ethical values and moral principles

of justice can achieve justified acceptability and thereby might best be employed to regulate the institutions that comprise the basic structure of society on all levels, as well as to guide our judgments regarding specific issues and matters of peace and justice.

Peace has generally been conceptualized as the absence of violence (Galtung 1990). However, instead of defining peace in terms of an absence of violence, which makes violence the operative concept, we can define it as the positive condition of the *presence of justice*. Peace defines a social system regulated by justifiable principles of justice and ethical values essential for the pursuit of a good life. Establishing and sustaining peace within all levels of societies is a basic and urgent matter of justice.

As stated above, the purpose of this book is to articulate a normative philosophical framework for the development of an educational approach to teaching peace as a matter of justice. This articulation includes an exploration of the concept of peace (including violence), the method of moral reasoning as a means of normative justification of principles of justice, the exercise of judgment as the application of principles of justice and ethical values, a human rights conception of justice contextualized within the basic questions of justice, and responses to injustice in terms of both the principles of nonviolence and ethics of war and peace. A pedagogy of moral reasoning and judgment is constructed that is consistent with the fundamental ideas of justice and the freestanding logical structure of moral reasoning within the context of basic questions of justice and responses to injustice. As a foundational premise of this book, it can be asserted that the educational cultivation of the capacities of moral reasoning and judgment in the population of citizens is of paramount importance. This cultivation speaks to the very purpose of an education for peace and justice, one identified by the celebrated peace educator Betty Reardon as the development of the *political efficacy of citizens* (Reardon and Snauwaert 2015a).

1. Moral and Political Philosophy: Reconciliation

There are at least two basic views of moral and political philosophy: the Platonic and the democratic views (Rawls 2007). The Platonic view maintains the existence of a universal moral truth that defines justice and is inherent in a universal moral order independent of human creation that can be comprehended by reason and known through rational intuition. The democratic view does not appeal to an independent moral order. Instead, it invokes the authority of our human capacity to engage in moral reasoning

for the purpose of constructing basic principles of justice that may be reasonably agreed to by citizens.

From this democratic perspective, citizens' capacities for moral reasoning and judgment play a pivotal role in practical considerations of peace and justice. This book is informed by, and addressed to, persons who aspire to democracy, including its imperatives and applications in a variety of levels of social cooperation, from local to global. As will be discussed in detail in what follows, moral reasoning concerning justice is intimately linked to democracy and democratic processes of deliberation (Baier 1958; Forst 2014a; Rawls 1971, 1993, 2001; Sen 2009). It will be argued that peace and justice are contingent, in part, upon the active, informed, reflective, and deliberative moral and political participation of citizens. Engaged, informed *citizens are necessary participants* in the pursuit of peace and justice, and those citizens need to be capable of exercising moral reasoning and judgment regarding principles of justice and a complex array of basic questions of justice.

Following the 20th Century American political philosopher John Rawls, an appeal to a democratic view of political philosophy and moral reasoning further suggests four roles for political philosophy (Rawls 2007, 10-11): (1) to be *practical*, working to resolve conflicts; (2) to provide an *orientation that* enables citizens to gain greater clarity about their political ideas and how to reason about them; (3) to enable *reconciliati*on, enabling citizens to understand, evaluate, and possibly affirm their social world; and (4) to help citizens probe the limits of what is possible in terms of the political organization of society. All four roles of political philosophy will be invoked in the exploration of thinking about an education for peace and justice, however, *reconciliation* has a central role.

As the 19th century German philosopher Hegel (Hegel 1991 [1821]) maintained, *reconciliation* means that citizens come to understand and affirm the social and political institutions of their society, the basic structure of society, as expressing and being consistent with their dignity as free and equal persons (Rawls 2000a). Just social institutions constitute the background conditions within which individuals are free to conduct their lives. Individual ends and purposes are contingent upon what we can realistically expect, and what we can expect is relative to both our position in the society (and its advantages or inequalities) and the principles of justice used to regulate the social and political institutions of the basic structure of society (Rawls 1971). We often are not completely aware of their influence on the limits and possibilities of our lives.

One general approach to normative political philosophy suggests that a just society is built on and through the vast array of ethical and moral

personal and social relationships between individuals. It is argued that a just society is contingent upon the ethical and moral goodness and rightness of such relationships (May 2015). However, it can be argued on a more basic level that the normative quality of relationships between individuals is contingent upon the basic institutional structure of society, and if that structure is unjust, then it is difficult at best for the vast array of individuals to engage in ethical relationships. The basic institutional structure of society is the water we swim in, and if the water is polluted, the pollution conditions the quality of our swimming together. This institutional perspective is further explored in this book, along with the political philosophy of reconciliation.

The ideal of realizing ourselves to be free and equal persons within the context of just social and political institutional conditions, is however, contingent upon citizens coming to know and affirm that the institutions that shape our lives are reasonable and just. Reconciliation, the process of reconciling with one's social and political world, is therefore essential for a just and peaceful society. As the American philosophy John Rawls suggests, to be a citizen means that "one understands that society is held together not simply by the satisfaction of particular interests but by a sense of reasonable [i.e., just] order …" (Rawls 2000a, 355).

Furthermore, the importance of citizens becoming reconciled with their society is a key dynamic involved in creating and maintaining a balance of power between political institutions and citizens. Based upon the historical analysis of Daron Acemoglu and James Robinson in their book *The Narrow Corridor: States, Societies, and the Fate of Liberty* (Acemoglu and Robinson 2019) a balance of power between State and Society creates a narrow corridor of liberty. The dynamics of the creation and maintenance of this corridor of liberty occurs within the framework of a balanced, dynamic structure of state-society power relations—the right balance of power between the State (government institutions and the elites that control them) and Society (the people as citizens). Reconciliation paves the way to what Acemoglu and Robinsion refer to as the "Shackled Leviathan": State power constrained by an informed and politically engaged citizenry (Acemoglu and Robinson 2019). The mobilization and empowerment of a society of citizens in relation to the State, balances the power between them creating a "corridor of liberty." The dynamics of this process of power balancing are referred to by Acemoglu and Robinson as the "Red Queen effect." The Red Queen effect (analogous to the Red Queen in *Alice in Wonderland* who tells Alice that in order to remain in place she has to keep running!) is that the State and Society must continually exercise sufficient and balanced capabilities relative to each other in order to maintain their

balance of power so that neither the state nor society dominates. Through this Red Queen balancing effect, a corridor of liberty, a social and political space is created within which justice can be established and freedom and equality protected.

State political power exists in a state of balance with the power of society when it achieves political legitimacy through consent. This balance creates a space, a corridor of justice, of positive peace, within a given society. The corridor constitutes the *sphere of peace as a balanced structure of State-Society power relations.* This balance of power as a part of reconciliation is contingent upon an informed and politically active citizenry, capable of engaging in the process of moral reasoning in order to justify and affirm principles of justice that regulate the basic institutional structure of society.

The main point of identifying a balanced structure of State-Society power relations, is to point out that engaged, informed *citizens are both necessary and essential participants* in the pursuit of peace and justice, and that citizens need to be capable of exercising moral and political judgment regarding a complex array of basic conflicts and questions of justice. In this sense citizens are the *agents*, and not the mere recipients, of justice (Forst 2017).

From the perspective of *reconciliation*, moral and political philosophy seeks to address the question of the justifiability, or normative validity, of the terms of social cooperation that are the foundation of the basic institutional structure of society, including its economic, political, and legal system (Rawls 1971, 1993). To say a norm and/or institution is right or wrong, just, or unjust, is to make a claim, and that claim should be backed by valid reasons, not merely personal preferences, or arbitrary authority. The process of moral reasoning and judgment is one of deliberating and offering reasons that justify those claims, including claims about the justifiability of social norms and institutions (Baier 1954, 1958; Singer 2011; Scheffler 1981).

It has long been recognized and is a premise of the argument in this book, that rational and reasonable citizens are a necessary condition for democracy, and thereby for peace and justice (Chomsky and Otero 2002; Dahl 2000; Dewey 1916; Freire 1998; Rawls 1993; Scheffler 1981; Sen 2002; Gutmann 1999). The fertile soil of autocracy, and thereby a potent threat to democracy and justice, is the irrationality and anti-intellectualism of citizens (Gessen 2020; Hett 2018; Paxton 2004; Stanley 2018). A case in point is the rise of Fascism in Germany and Italy after World War I (1920s-1930s) as a hostile anti-democratic movement. Fascism rests upon populism; its political base is the mass of ordinary people. As a political ideology and movement, it appeals, however, not to the reason of citizens,

but to their emotions. It appeals to "mobilizing passions" that support and feed the rise of fascism. The nature and danger of irrationality is illustrated by the case of Adolf Eichmann, as interpreted by the philosopher Hannah Arendt in her important book *Eichmann in Jerusalem* (Arendt 1994). Arendt observed that Eichmann, the official in charge of the deportation of Jews and others to the concentration camps, was incapable of the exercise of moral reasoning and judgment (to be discussed further in Chapter 8).

The educational cultivation of the capacities of moral reasoning and judgment in the population of citizens is therefore of paramount importance; this educational cultivation constitutes the core of an education for peace and justice. If the moral reasoning and judgment capacity of citizens is of paramount importance for peace and justice, then, as the political and educational philosopher Amy Gutmann suggests: "'political education' - the cultivation of the virtues, knowledge, and skills necessary for political participation - has moral primacy over other purposes of public education..." (Gutmann 1999, 287). The society, in particular the government, has, therefore, the civic duty to provide citizens with a political education that is devoted to the development of their capacity to engage in moral reasoning and judgment (Snauwaert 2020b). As a basic premise of this book, it can be asserted that the educational cultivation of citizens' moral reasoning and judgment capacities is of singular importance; hence, the significance of a reflection on the normative philosophical foundations of an education for peace and justice.

2. The Organization and Summary of Chapters

This book is organized into 2 parts. Part 1 includes Chapters 1, 2, and 3, and lays a foundational framework of analysis by defining the nature of moral reasoning concerning peace and justice. The nature of this method of moral reasoning and judgment as an alternative to other ways of determining a moral point of view of what is good, right, and just, such as authority, social custom, and tradition, etc. is explored. This appeal to moral reasoning offers a basic framework for analyzing various considerations of justice which are central to exploring the questions of peace and justice discussed in the remaining chapters of the book.

The purpose of Part 1 is to explore: 1) conceptions of peace, and its core problematic, violence, as urgent matters of justice, 2) the nature of moral reasoning pertaining to justice, and 3) the pedagogical orientation and approach as a foundational pedagogy of ethical and moral reasoning and judgment. If peace is conceived in terms of justice, what is the normative rational basis for a conception of justice, its normative meta-

criteria, and how should we educate future citizens to be able to participate in thoughtful moral reasoning about basic questions of justice?

In Chapter One the concept of peace will be explored in terms of both the content of peace and violence as its problematic, as well as the spheres of peace or the spaces/levels of society in which peace can occur. In terms of the content of peace there are two basic conceptions: negative and positive peace—negative peace being the absence of violence and positive peace being the presence of justice. In this discussion the idea of violence as the problematic of negative peace will be discussed in terms of its basic definition as the infliction of avoidable harm and the three basic forms it can take: direct, structural, and cultural.

Historically, peace has been defined as the absence of war between states (Galtung 1969, 167). This condition has been referred to as "negative peace," negative in the sense that it is a state of affairs *free from* significant degrees of direct, physical violence. However, the idea of peace has been expanded to include the absence of not only organized warfare but violence of all kinds. These other froms of violence have been conceptualized as structural and cultural violence. This expansion broadens the content of peace to include the absence of all forms of violence.

However, it will be argued that peace can be conceived more fruitfully in a positive sense: peace understood as the presence of justice. This notion of peace as the presence of justice is known as "positive peace". Furthermore, the ideas of justice and positive peace will be conceived in terms of human rights and their correlative duties. Lastly, the sphere of peace as the space within which peace occurs will be explored in terms of three levels: the nation-state, international society, and global society. The sphere of peace will be conceived as contingent upon the conception of the scope of justice. Principles of justice pertaining to the basic questions of justice explored in Part 2 will be considered on each level.

Chapter Two explores possible approaches to normative justification of principles of justice. It is argued that normative justification consists in offering reasons to support one's principles, values, and judgments; not any reason will do, however. Reasons of justification also require that the offered reasons be valid, that is, justifiable themselves. Moral reasoning concerns the justifiability and thus the normative validity of principles of justice, and the judgments based upon them, that pass the test of the criteria of fairness understood as presuppositions of moral reasoning. A *method of moral reasoning* is appealed to, rather than claims of the truth of an independent moral order or mere social acceptance and custom, in order to establish the criteria of the normative justifiability of ethical values, principles of justice, and judgments. It will be argued that the exercise of

moral reasoning grounded in the presuppositional criteria of fairness is a reasonable approach to normative justification in a world characterized by social and cultural pluralism/diversity.

Chapter Three articules the philosophical orientation to the proposed pedagogical approach. What principles can be applied to frame a pedagogical approach for the educational development of the capacities of moral reasoning and judgment articulated in Chapter 2? It is posited that a process-oriented and inquiry-based pedagogical approach, articulated in the philosophies of education of John Dewey, Paulo Freire, and Betty Reardon, is foundational to the development of moral reasoning and judgment.

Secondly, a foundational principle of this pedagogical approach is the orientation of teaching in terms of the logical structure of disciplines (Bruner 1965). The emphasis in this orientation is on understanding the structure of the subject matter in two basic ways: it's fundamental ideas and the nature of inquiry characteristic of the subject matter. Capacities of reasoning are developed through participation in, and exercise of, the forms of thought as structured in the methods of inquiry characteristic of disciplines of study and grounded in their fundamental ideas and methods of inquiry. A pedagogical outline of the exercise of moral reasoning concerning the basic questions of justice (as explored in Part 2) will be articulated within the project of defining and defending a *constitution of peace.*

In Part 2, the exercise and practice of applying moral reasoning to justify principles of justice, and the exercise of judgment as it applies ethical values and moral principles of justice to specific cases of policy, practice, and institutions, will be explored as a pedagogical process within the context of basic questions of justice:

- *Whose Security?* Who should have an equal right to security of person?
- *Who Belongs?* Who should be considered an equal citizen and thus a full participant in the society? (Mettler and Lieberman 2020)
- *Whose Truth?* What conception of truth and thereby reality should be affirmed? What is the valid basis of determining truth?
- *Who Gets What?* What constitutes a just distribution of the basic goods and resources of a society?
- *Who Decides?* Who should have political decision-making authority? Who should have power? What constitutes a just distribution of political power?

- *Whose Resistance?* Is there a right and duty to resist and redress injustice? If so, what principles of corrective justice should guide that resistance? Who should bear this duty to resist?

Exploration of these questions will provide background understanding of the basic questions of justice and demonstrate the pedagogy of moral reasoning and judgment. Answers to these questions of justice are necessary for the establishment of just and peaceful societies, from local to global; they form the fabric of a *constitution* of a *just* society. Through exercise of moral reasoning and judgment, Part 2 offers a framework and process for the conceptualization of such a society as part of a pedagogical practice, as outlined below. It is important to note that the exploration of the basic questions of justice, including background knowledge and alternative principles of justice as answers to these questions is not meant to be an exhaustive treatment. Rather the approach taken is *illustrative*, presenting exemplary possibilities as a means for the exercise and practice of moral reasoning and judgment. Although detailed discussion of the basic questions of justice and alternative answers in the form of principles of justice is pursued, the main purpose is not to determine necessarily *what* readers and students should think but *how* to think about the basic questions of justice that are foundational to peace and justice.

Chapter Four: *Whose Security?* Security is a fundamental good; freedom from physical violence, including the threat of violence, is a necessary condition for a decent life. Of course, an appeal to a human right to security of person is *one* possible answer to the question *whose security?* Is there a justifiable *human right* to security of person, expanding the scope of security to all human beings, or does the right to security of person stop at the borders of nations? Thus, the chapter will also explore two alternative conceptions of security of person that do not recognize a universal scope of security: the theories of Realism and International Society.

Chapter Five: *Who Belongs*? Who belongs and who doesn't is a basic question of membership and standing that every society addresses. Who should be considered a citizen and thus a full participant in the society? Should citizens have equal standing in society, or should membership be distributed unequally in terms of a social and political hierarchy? From a rights perspective, membership constitutes the "right to have rights," in the sense that it is membership that gives one the standing in the society to make justified claims; equal standing as a member is therefore the "equal right to have equal rights." Membership and equal standing therefore are of singular importance. The purpose of this chapter is to explore and discuss a process of moral reasoning, and thus a pedagogical framework, concerning the basic

principles of justice and values, and judgments based upon them, pertaining to laws and policies regarding the rational basis of membership, including immigration, *and* standing in society.

Chapter Six: *Who's Truth?* A basic problem for every society is the question of how to adjudicate conflicts of knowledge and truth (Rauch 2021). This adjudication is especially important, for beliefs are identity-defining. In exploring this question Charles Sanders Peirce's four methods of settling beliefs and opinions is employed (Peirce 1877). Peirce's four methods are tenacity, social acceptance, authority, and science. The method of tenacity is the attempt to hold on to one's belief by avoiding competing reasons that would challenge it: reasoning by avoidance. The method of social acceptance is an appeal to reasons that are generally accepted in one's social and cultural context, or taking the validity of what is accepted at face value without further scrutiny. The method of authority is for a recognized elite to supply and validate belief and to enforce it, if necessary, by force or coercion. The method of science, broadly defined, is to subject truth claims to critical public scrutiny grounded in established and recognized methods and standards of inquiry. Truth claims that survive such inquiry become settled and established (Peirce 1877).

In this chapter the validity of each of these methods as they apply to settling truth and knowledge is explored. It will be argued that we should appeal to the method of "science" as critical public scrutiny to settle truth. Furthermore, the chapter explores ways in which belief and truth can be distorted and weaponized in terms of disinformation for political purposes. The basic question to be reflected and deliberated upon is: what principles of justice pertaining to the process of fairly settling truth and belief should be adopted? What principles are most consistent with basic rights of freedom and the elements of fairness?

Chapter Seven: *Who Gets What*? The purpose of this chapter is to explore and discuss prominent conceptions of distributive justice within national societies and beyond to the question of global distributive justice. Distributive justice concerns the question of *who gets what*? *Distributive justice* pertains to the question: what is the most morally and ethically justifiable distribution of social goods? In other words, the principles of distributive justice tell us how the benefits and burdens of living in society together *should be shared,* including those relating to environmental sustainability and justice. A conception of distributive justice specifies: (1) rights *and* duties, (2) the content of those rights in terms of the social goods to be distributed, and (3) the scope of justice (meaning: How far should distributive justice reach? How inclusive should the moral community be?). Human rights provide a general statement of what we are due and what we

owe others, and thus distributive justice. However, they do not speak to the specific distribution of their content as well as the scope of that content's distribution. On what grounds are we to determine an unequal but fair distribution of social and economic goods?

The meaning of a just and peaceful society is contingent in part upon how distributive justice is conceived. For that we need principles of distributive justice. Reflection upon the various approaches to and conceptions of distributive justice is foundational to reasoning and judgments concerning peace, including the injustice of structural violence. Furthermore, justifiable and affirmed principles of justice, as common fair terms of social cooperation, are important tools that empower citizens and thereby are essential for the establishment and maintenance of the sphere of peace conceived as the corridor of liberty and justice. Distributive justice is a fundamental element of a just, positive peace, for without a fair distribution of social goods and opportunities, including environmental sustainability, a society will be burdened by structural violence, domination, and oppression.

Chapter Eight: *Who Decides?* 'Who decides' is the basic question of how political power should be distributed among the population, including citizens, as well as on what basis political power is justifiable and legitimate. As will be discussed, from within the moral point of view of the elements of fairness the recognition of reciprocal equality suggests that there is no person with authority that is a moral superior to any other person. From this perspective, no one is inherently superior to others. This moral equality suggests further that no one can claim political power/authority and in terms of reciprocity deny the same claim to others, and furthermore, others can reasonably reject others' non-consensual claims of power. Political power is therefore derived from consent. If power is delegated, it must be representative. In terms of impartiality, claims of political power/authority must be to the benefit of others not merely for one's own self-interest. These are the basic requirments and tests of justifiable answers to the question of Who Belongs. What kind of political system is consistent with fairness? What constitutes a fair distribution of political power? Is a democratic political system the most justifiable among the alternatives? What is the scope of democracy?

Chapter Nine explores the basic question of Whose Resistance? or *corrective justice,* in the sense that it considers what moral principles can guide our response to violations of the ethical values and moral principles of justice? The purpose is, thereby, to explore principles of justice that guide responses to resisting and redressing injustice. In that sense, the subject of this inquiry is to explore principles of *corrective justice* (Mills 2016, 2018).

Corrective justice is understood as *nonideal* theory in contrast with the ideal principles of justice that are explored earlier in the book. Nonideal theory is situated within an ideal theory of justice, for injustice can only be determined from within the parameters of an ideal theory of justice. Chapter Nine, thereby, explores the philosophy and strategy of nonviolence in response to the existence of injustice, including social injustice and structural and cultural violence, as well as the ethics of the possible use of military force in response to the injustice of military aggression. Nonviolence is both a normative philosophy of justice and a political strategy of transformative direct action; it is primarily a principled response to injustice. Nonviolent philosophy and strategy seek to transform social structures of violence, domination, and oppression through nonviolent direct action. Principles of corrective justice are grounded in the moral duty to resist and transform injustice. Therefore, the analysis begins with a discussion of the moral duty to resist injustice. Based on that duty, *nonviolent principles*, as the *default position of resistance* are examined, followed by an analysis of the basic question of whether the use of military force is justifiable in resistance to injustice, its limitations, and subsequent post-conflict obligations. The chapter examines what principles can be used to justify the use of force in particular cases (*jus ad bellum*), the principles that guide the use of force within acceptable moral limits (*jus in bello*), as well as principles that speak to moral responsibilities pertaining to the post-conflict situation and the restoration of peace (*jus post bellum*).

Throughout the book the principles of justice will be explored in various contexts and levels of human society essential to creating and maintaining a just peace. The process of moral reasoning in terms of fairness will be used to deliberate upon the principles of justice that are most justifiable in the pursuit, establishment, and maintenance of peace, and the application of those principles to moral judgment concerning matters of peace and justice.

PART 1

PEACE AS A MATTER OF JUSTICE AND MORAL REASONING

CHAPTER ONE

THE CONCEPT OF PEACE

This chapter explores the concept of peace, which includes discussions of violence as its' core problematic. The concept of peace has two basic dimensions. The first dimension seeks to answer the question: what is the content of peace? The second dimension is the "sphere of peace", which refers to the space where peace exists. The spheres of peace include the scope or range of peace: local, national, international, or global (Matsuo 2007). In general, the conditions of peace arise within organized social relationships that comprise the basic structure of society (Rawls 1971).

In terms of the content or value of peace, there are two basic conceptions, negative and positive peace; negative peace being the absence of violence and positive peace being the presence of justice. The idea of violence as the problematic of negative peace will be discussed as the infliction of avoidable harm, and the three basic forms it can take: direct, structural, and cultural.

Historically, peace has been defined as the absence of war; the absence of direct organized violence between states (Galtung 1969, 167). This condition has been referred to as "negative peace,"; negative in the sense that it is a state of affairs *free from* significant degrees of direct, physical violence. This work adopts an expanded concept of negative peace to include the absence of not only organized warfare, but the absence of violence of all kinds, including structural and cultural violence (discussed in detail below). This expansion broadens the content of negative peace to include the absence of all forms of violence (Galtung 1969).

If we define peace only in terms of an absence of violence, however, we allow violence to be the operative concept. If we define the conditions of peace in a pro-active, affirmative way, peace can be defined as the presence of justice; since violence itself is an urgent matter of justice, peace is more aptly defined as the presence of justice. This notion of peace as the presence of justice (and not the absence of violence) is known as "positive peace". While acknowledging the limitations of defining peace in negative terms as an absence violence, in favor of a positive definition that concieves peace as the presence of justice, it is still important to recognize that violence is the core problematic of peace. Violence is an urgent matter of justice

marking the presence of injustice. It is important to recognize that these two concepts of peace, negative and positive, are intertwined. In what follows, the ideas of justice and positive peace will be examined and further discussed through the lens of human rights and their correlative duties, beginning with an exploration of the nature of violence.

1. The Nature of Violence

The core problematic of peace is violence. Violence can be defined in the following way:

> *... violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations ... Violence is here defined as the cause of the difference between the potential and the actual ...* Violence is that which increases the distance between the potential and actual, and that which impedes the decrease of this distance (Galtung 1969, 168).

When an act, practice, policy, and/or institution impedes, damages, or destroys a person's or persons' realization of their potential as human beings, then violence is present. In other words, violence is that which dehumanizes. Therefore, harm can be understood as the suffering of a deficiency in one's ability to realize the fundamental interests necessary for a life of dignity, as the failure to protect the vital interests of persons. The ultimate act of violence, therefore, is take another person's life, for it destroys their potential; it is the ultimate dehumanization.

Another way to understand violence that converges with the above is to define it as the violation of the integrity (wholeness or intactness) of the being of another (Buffachi 2007). Furthermore, integrity refers not only to one's physical body but also to the autonomy of a person, the capacity to be self-determining (MacCallum 2009). From within these perspectives, violence can be understood as that which violates respect for the dignity of the person (May 2015). The infliction of psychological harm is also a type of violence so defined (Audi 2009).

However, there is a further requirement for the constitution of violence: the harm must be *avoidable*. Hence, we can define *violence as avoidable harm* (harm understood in terms of the definition above). Of course, the meaning of *avoidable* includes *intentional* harm (Galtung 1969; Reardon 2010b; Reardon and Snauwaert 2015a). To elaborate, if the harm is inflicted because of naturally occurring phenomena, such as a drought, flood, tornado, or viral pandemic, then, even though it causes harm or destruction, it is not violent, for it is unavoidable from a human perspective.

However, if many people die and are injured due to intentional poor construction of buildings and bridges to save construction costs and increase the builder's profits, then the harm may have been avoidable, and thus the builder may be guilty of the commission of violence. A viral pandemic is not violent as such, because the harm is generally unavoidable. However, if for political reasons the government's response to a pandemic causes avoidable illness and death, then that government may be committing violence against its own people. Government inaction in the face of global climate change due to humanly generated carbon emissions is another example of violence related to a seemingly naturally occurring phenomenon. The point here is that an act of violence is defined as an act of avoidable harm, the avoidable degradation of human potential.

1.1 Direct Violence

When there is an actor and their action is the cause of avoidable physical and/or psychological harm, then there is the commission of *direct violence* (Galtung 1969; Audi 2009). Psychological abuse or torture, for example, can be considered a form of direct violence, for it often inflicts permanent harm. The paradigm case of direct violence is aggressive warfare, the intentional organized violent use of military force, often inflicted between states but also by states against other forms of organization (e.g., terrorist groups). Aggression is the crime of unjustified use of force against innocent societies and persons (whether the use of force is ever morally justifiable will be discussed in detail in Chapter 9). As Michael Walzer puts it: "Every violation of the territorial integrity or political sovereignty of an independent state is called aggression" (Walzer 1997, 52). Such acts violate the self-determination and integrity as well as physical and psychological well-being of the people of the violated state. As Walzer suggests, aggressive warfare "interrupts peace ... peace-with-rights a condition of liberty and security that can exist only in the absence of aggression itself" (Walzer 1997, 51).

There are, however, potent forms of violence other than direct violence; violence is not limited to *direct* physical or psychological violence as we discuss in the following section which explores structural or systemic violence.

1.2 Structural Violence

One additional potent form of violence is what is referred to as "structural violence" or "systemic violence" (Galtung 1969; Žižek 2008).

Structural, systemic violence is avoidable harm that is caused by how social institutions and the basic structure of society are designed and function, including the terms/policies that regulate them. As Galtung suggests: "The violence is built into the structure and shows up as unequal power and consequently as unequal life chances ... Above all the *power to decide over the distribution of resources* is unevenly distributed" (Galtung 1969, 171). The core element of structural violence is the perpetuation of socially unjust unequal social stratification in terms of social class, race, ethnicity, gender, sexual orientation as well as other morally arbitrary characteristics: "... the general formula behind structural violence is inequality, above all the distribution of power..." (Galtung 1969, 175). If institutions function to distribute power unequally, disempowering persons in a way that significant harms them in terms of exploitation, oppression, and domination, they are structurally violent. In the case of structural violence there is no subject who acts nor is the harm overtly intended; it remains latent in the structure and functioning of institutions, and does not issue from any specific person, yet it is avoidable.

Hence, structural violence is *person-invariant*. "The violence is built into the structures. No personal violence or threats of personal violence are needed" (Galtung 1969, 178). It is perpetuated by the concerted behavior of many individuals conditioned by the rules of the institutions they inhabit. In this regard, to identify structural violence, we look to the consequences emanating from institutions as well as the rules that define and regulate them. Rather than the result of a few people's choices structural violence is "embedded in unquestioned norms, habits, and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules" (Young 1988, 39).

Structural violence entails both domination and oppression. Domination is the traditional form of injustice in terms of tyranny. When power is exercised without the consent of those subjected to it, thereby being imposed, it is morally *arbitrary*. The basic moral constraint on power, upon which its legitimacy is dependent, is whether it is justifiable to all those affected by it. As the moral philosopher Rainer Forst demonstrates, the first question of justice is power and thus the avoidance of arbitrary rule/domination: that is, being subjected to power without valid justification (Forst 2012). Domination occurs when there exists a basic inequality in the distribution of power within the social and political system that is morally arbitrary. From this perspective, the condition of non-domination is defined as persons not being forced to comply to demands and practices that are unjustifiable; that they would have reason to reject. To be subjected to norms and practices that do not have valid justification is to suffer

domination, and domination in turn lays the ground for various types of oppression.

Oppression refers to "structural phenomena that immobilize or diminish a group" (Young 1988, 40). Oppression is therefore a condition of social groups, a set of relations within or between societies (Young 1988). There are at least five types of oppression:

1. Exploitation
2. Marginalization
3. Powerlessness
4. Cultural Imperialism
5. Violence

Whether or not a social group is oppressed depends on whether they are subject to one or more of these 5 disabling conditions. All of them refer to relations of power and domination that occur by virtue of the social division of labor (Young 1988).

Exploitation "occurs through a steady process of the transfer of the results of [the] labor of one social group to benefit another" (Young 1988, 46). It is grounded in the social rules that structure relations between social groups: type of work; who does what for whom; the compensation of work; and appropriation of the results of work. Exploitation maintains and augments the power, status, and wealth of the "haves." "The injustice of exploitation consists in social processes that bring about a transfer of energies from one group to another to produce unequal distributions, and in the way in which social institutions enable a few to accumulate while they restrain many more" (Young 1988, 49). Exploitation cannot be eliminated by the redistribution of social goods; it requires the transformation of institutionalized practices and structural relations, specifically decision making and the division of labor.

Marginalization consists of *exclusion* from useful participation in social life. It blocks the opportunity to exercise a person's capacities, thereby leading to dependency on the State, which subjects marginalized persons to arbitrary and invasive (coercive) authority. The State then exercises undue power over their lives and has sufficient warrant to suspend their basic rights (Young 1988).

Powerlessness designates being in a social position where persons have limited power to decide the conditions of their lives. Persons in a position of powerlessness must *prove* their worth rather than having it recognized as inherent in their humanity. The power group's experience and culture establishes their values as the dominant social norms and values, rendering

the oppressed group's cultural values and perspectives *invisible* (Young 1988). Being powerless, following W. E. B. Dubois, generates having an internal “double-consciousness”, the pervasive "sense of looking at one's self through the eyes of the other” (Young 1988, 55).

Direct violence is used to enforce the perpetuation of structural violence when the structures are being called into question. In this case the direct violence is systematic in the sense that it exists as a social practice; rule-bound, social, and premeditated (Young 1988). While direct and structural violence are empirically independent, in the sense that there is no necessary causal relationship (one is not presupposed by the other), they can blend into one another (Galtung 1969).

1.3 Cultural Violence

Structual violence is justified and sustained by ideological belief systems, and thus those systems can also be understood to be violent in a “cultural” sense. As Galtung defines it: "By 'cultural violence' we mean those aspects of culture, the symbolic sphere of our existence ... that can be used to justify or legitimize direct or structural violence” (Galtung 1990, 291). The purpose of cultural violence is to render violence *acceptable*. As Galtung suggests, "Cultural violence makes direct and structural violence look, even feel, right - or at least not wrong” (Galtung 1990, 291). To justify and normalize direct and structural violence the "culture preaches, teaches, admonishes, eggs on, and dulls us into seeing exploitation and/or repression as normal and natural, or into not seeing them ... at all” (Galtung 1990, 295).

The basic political structure of society is a space of deliberation and action that is given shape by “specific forms of reason” such that “political power always materializes and is given shape by distinct rationality, a form of reason and its occlusions, a set of norms and its generative effects” (W. Brown 2019, 56). As such, the political structure of society is a normative order, and thereby, an “order of justification” (Forst 2017, 44). In other words, “there are certain justification narratives on which such an order or system is founded” (Forst 2017, 44).

The exercise of power is the capacity to influence and determine the reasons that justify and legitimate the narrative which organizes the political order. Power can therefore be defined as the ability to define the values, norms, and laws upon which the political order is organized. In other words, power is the capacity to “determine the space of reasons within which social or political relations are being framed - relations which form a structured, durable, and stable social order of action and justification” (Forst 2017, 49).

The core idea of cultural violence is that unjust social structures and practices are sustained by invalid justification narratives and patterns of thought. Cultural Violence is exercised through a variety of cultural domains, including:

- religion: "the chosen people"; separation; hierarchy; we/them
- ideology: nationalism; militarism; patriarchy; racism
- language: expressions of gender; race; ethnicity; social class bias
- art: dehumanizing images of the enemy or the oppressed, and the glorification of one's own social group
- empirical and formal science: privileged paradigms; modes of inquiry and accepted patterns of thought
- cosmology: "deeper assumptions about reality, defining what is normal and natural" (Galtung 1969, 301).

Protection of these narratives often involve attacks on truth, expertise, language, and education. The delegitimization of truth, expressed as hostility to verifiable reality and even the very idea of truth itself, is a prominent feature of attempts to distort and undermine the space of justifications. It is often executed by repeated dishonesty and the advocacy of conspiracy theories.

Furthermore, accompanying efforts to delegitimize institutions that promote and sustain independent thought, such as universities and the free press, are continually pursued, which in turn undermines the value of expertise as a source of truth and valid justification. This attack on truth and its institutions leads to the delegitimization of valid moral and legal norms. This normative delegitimization seals off the space of justificatory reasons, which degrades and debases public deliberation, turning it into mere sloganeering as well as appeals to fear and anger, rather than reasoned argument (Frum 2018; Snyder 2018; Stanley 2018).

In one of its most potent forms cultural violence manifests as “ideological hegemony”, which constitutes the institutionalization of false consciousness and disempowerment. This occurs through the regulation of dominant institutions by principles, values, and norms that are morally arbitrary and unjustifiable, which serve the narrow interests of a class-conscious “elite”. These invalid principles, values, and norms form an ideology that comprises the morally arbitrary ruling ideas of the social order: its invalid justification narrative. Through various social institutions, including schools and the media, the arbitrary ruling ideas of the elite are established as the standard explanation and justification of the social order. These ruling ideas are portrayed to be in the interests of all citizens;

however, they often serve the interests of the elite portrayed as the common interest. These ruling ideas serve to limit discussion and debate preventing the formation of alternative valid justification narratives based in justifiable values and principles, thus contributing to the general acceptance of the unjust status quo (Gramsci and Buttigieg 1991; Tozer 1993).

1.4 Two Examples of Structural and Cultural Violence

Two prominent examples of structural violence and culturally violent, identity-based ideologies are racism and patriarchy. The historic American racist ideology of the "Jim Crow" social structure of the late 19th and first half of the 20th centuries vividly illustrates both structural and cultural forms of violence. Basically, "Jim Crow" was a successful effort to reconstruct the social and economic structure of the South (after they lost the Civil War) to approximate and thereby to *de facto* continue the slave system. "Jim Crow" sought to ensure the racial segregation and political disempowerment of African Americans through the systematic violation of their right to vote, their freedom to assemble and associate, and their right to exercise freedom of speech, among other civil rights. In was enforced by the well documented direct violence of the KKK (Klu Klux Klan) backed by police force, which involved beatings, lynching, police brutality, and commonly, a racially biased judiciary (Anderson 1988, 2007; Gutmann 1999; King 1967).

Even though legal racial segregation was struck down as unconstitutional by the Supreme Court in violation of the equal protection clause of the 14th Amendment to the US constitution in *Brown v. Board of Education* (1954), this racist structure and ideological system continues in various forms, including a discriminatory criminal justice system and police brutality, school segregation, voter suppression, and economic inequality. Racism as a form of structural and cultural violence is an urgent matter of justice. As Ibram X. Kendi suggests:

> ... if racial discrimination is defined as treating, considering, or making a distinction in favor or against an individual based on that person's race, then racial discrimination is not inherently racist. *The defining question is whether the discrimination is creating equity or inequity.* If discrimination is creating equity, then it is antiracist. If discrimination is creating inequity, then it is racist ... *The only remedy to racist discrimination is antiracist discrimination* (Kendi 2019, 15, emphasis added).

Racist policies are those that produce or sustain inequity between racial groups, and inequity is defined in terms of equality (discussed in Chapter 2). Ideologically racist narratives convey the idea that one racial group is

inferior or superior to another racial group. Racist ideas provide a justification for racial inequities by attributing inequality to the inferiorities and superiorities of racial groups (Kendi 2019). Hence racism can be understood as both structurally and culturally violent, for racism is "a powerful collection of racist policies that lead to racial inequity and are substantiated by racist ideas" (Kendi 2019, 16). Racism structures and justifies unequal membership and standing based upon a morally arbitrary attribute, race, and therefore, violates equal recognition, reciprocity, and impartiality—fairness.

Another prominent example of both structural and cultural violence is the system of Patriarchy (Reardon and Snauwaert 2015b). Patriarchy is a social, political, and economic system of control and domination structured in terms of a hierarchy of human relationships and value that is based in socially constructed gender differentiation. As such, it bestows unequal power and value onto males who exhibit its most important values and traits, excluding and oppressing those who do not. It is a social system that has been in place throughout the history of human societies, and it constitutes the paradigmatic case of inequality and injustice, and thus structural violence. The patriarchal system is the basis of most, if not all, forms of social injustice.

Like race, gender, the defining element of patriarchy, is not a natural phenomenon; it is a social construct. Unequal, hierarchical, and exclusionary gender differentiation serves as the defining structural element of the patriarchal social system as well as its ideological justification. It is so ingrained in human consciousness that it is often understood as a part of the natural order; it is in turn justified and reinforced by patriarchal religious (among other) doctrines.

Patriarchy thereby functions also as a potent form of cultural violence. Patriarchy is in fact value-based; in particular, it is grounded in a value bifurcation between negative and positive masculine and feminine values. Socially constructed gender differences are internalized into interior psychic constructs that shape perceptions of difference in terms of otherness; an otherness to be feared. It is these deep fear-based psychological dynamics that underpin the symbiotic relationship between patriarchy and the war system. Patriarchy and the war system are interrelated and interdependent manifestations of the general problem of social violence. Gender inequality and its concomitant oppression of women are integral parts of militarism. Entailed in patriarchy's hierarchical structure, and its bifurcated values and psychic dynamics, is the perceived need, partly generated by fear of the other, to maintain a constant, systemic threat of coercive force in order to maintain control and domination (Reardon and Snauwaert 2015b; Reardon

2010b; Reardon and Hans 2010). Patriarchy structures and justifies unequal membership and standing based upon a morally arbitrary attribute – gender. In this way, patriarchy offends the vital interests of persons, thereby unjustly violating their rights.

2. The Nature of Peace and the Presence of Justice

In the effort to conceptualize the idea of peace, peace can be characterized as a significant degree of the absence of violence (defined as avoidable harm). Peace has historically been conceptualized as the absence of violence, and its definition has been structured in the same way as the conception of violence: negative peace as the absence of direct violence, and positive peace as the absence of structural and cultural violence (Galtung 1990).

However, instead of defining peace in terms of an absence of violence, which makes violence the operative concept, we can define the condition of peace in a pro-active, affirmative way, defining peace as the presence of justice, a "positively defined condition". Since violence is an urgent matter of justice, peace is more aptly defined as the presence of justice, defined in terms of the rights and duties that protect the vital interests of persons and the establishment and functioning of institutions consistent with those rights and duties. If we understand *peace* as the presence of justice, *as a just society*, then the pursuit of peace entails both an understanding and the application of principles of justice, including rights and duties, by the government and by citizens. Peace is a basic good, an ethical good of the highest value. Establishing and sustaining peace within all levels of societies is a basic and urgent imperative of justice.

Furthermore, because security of person is a vital interest, it can be argued that we are morally justified in claiming and demanding it. The ethical value of negative peace is based in the assertion that security of person is a vital, fundamental interest or good. Without being free from physical violence, including the threat of violence, a decent life is difficult, at best, to realize.

The realization of our human potential and the pursuit of a good life is significantly diminished under the conditions of direct violence. To be invaded and occupied by a hostile foreign army, for example, greatly diminishes the possibility of a good life. The same is true for living under the threat of a criminal organization or a hostile, threatening police force. In other words, it can be asserted that we have a *right* to security of person. Therefore, if we begin with the definition of peace as the absence of direct

violence, then even from within that narrow perspective, *peace is a matter of justice*, for it violates the right to security of person.

Moreover, if we understand justice to pertain to what each person is due or justified in demanding, as well as what we owe to each other - our obligations to each other, then the fulfillment of what we are due and thus what owe to each other is a matter of how society is organized in terms of its basic institutional structure. Justice does not refer to the whole of morality, including our conception of the good life and what morality demands of us in our personal relationships with others, among many other considerations. One general approach to normative political philosophy suggests that a just society is built on and through the vast array of ethical and moral relationships and interactions between individuals. A just society is contingent upon the moral soundness of such relationships (May 2015).

However, in contrast, it can be argued that justice concerns the organization and functioning of social institutions (political, legal, economic, educational, etc.), specifically the integrated system of social institutions that comprises the basic structure of society (Pogge 1989, 2001; Rawls 1971, 1993, 2001). It can be argued that the normative quality of relationships between individuals is contingent upon the basic institutional structure of society, and if that structure is unjust, then it is difficult at best for individuals to engage in ethical relationships.

Perhaps a more compelling way to conceive the subject of justice is therefore to conceive it in terms of the principles that regulate the basic institutional structure of society. If justice pertains to what each person is due *and* what we owe to each other in light of what we are due, then the principles of justice would necessarily express what each person is *justified* in demanding as a "moral claim on the organization of society" (Pogge 2001, 200) and what the society is obligated to provide each person as a matter of justice. Justice, therefore, pertains to the organization and functioning of social institutions (political, legal, economic, educational, etc.) and the integrated system of social institutions that comprises the basic structure of society. From within this perspective, for example, negative peace is a matter of justice because security of person is a vital interest, thereby generating a right to security, and in turn, a duty to organize society in ways that avoid depriving persons of their right to security, protecting them from threats to their security, and aiding victims of direct violence. The right to security of person, therefore, imposes duties onto the basic institutional structure of society as a matter of justice. These claims and obligations are expressed in the language of rights and duties.

3. Rights and Duties as Matters of Justice

Given the basic definition of justice above, it can be argued that the language of rights and duties can powerfully conceptualize the idea of justice, for justice pertains to: (1) what each person is due or justified in demanding, and rights can be defined as justified claims; and (2) what we owe to each other; our obligations and duties to each other. Justice thereby entails rights and duties, and therefore, its principles can be expressed in terms of rights and duties, constituting a rights-based conception of justice. The reciprocal granting of rights to one other is the way through which we recognize each other as free and equal persons. Rights and duties are central to the establishment and enactment of just social institutions, including governments.

The idea of human rights is the common way of articulating the demands of justice in the modern world (Bobbio [1990] 1996; Falk 2000; Glover 2000; Gutmann 2001; Ignatieff 2001; Jones 1999; Perry 1998; Vincent 1986). Rights talk has become the "*lingua franca* of global moral thought" (Ignatieff 2001, 53). As John Finnis puts it: "The modern language of rights provides . . . a supple and potentially precise instrument for sorting out and expressing the demands of justice (cited in Perry 1998, 55)." As Norberto Bobbio suggests: "I find it difficult to see how one can deny that the affirmation of human rights . . . is one of the mainstays of universal political thought which we *cannot* go back on" (emphasis added Bobbio [1990] 1996, 88). Human rights constitute a "world ethos" – they define a normative system of how the world *should* be (Bobbio [1990] 1996, 69-70). The reciprocal granting of rights to each other is the way through which we recognize each other as free and equal persons. Rights therefore are central to the establishment and enactment of justice.

One way to conceive of human rights is to define them as what a person is due. This conception is articulated by Jacques Maritain:

> What does the notion of right mean? A right is a requirement that emanates from a self with regard to something, which is understood as his due, and of which the other moral agents are obliged in conscience not to deprive him. The normality of functioning of the creature endowed with intellect and free will implies the fact that this creature has duties and obligations; it also implies the fact that this creature possesses rights, by virtue of his very nature-because he is a self with whom the other selves are confronted, and whom they are not free to deprive of what is due him (Maritain 2001, 60).

From this perspective, "rights" constitute what every person is owed by virtue of their standing as a free and equal person.

A similar conception is offered by Henry Shue:

> A moral right provides: (1) the rational basis for a justified demand; and (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats (Shue 1980, 13).
>
> Basic rights, then, are everyone's minimum reasonable demands upon the rest of humanity. They are the rational basis for justified demands, the denial of which no self-respecting person can reasonably be expected to accept (Shue 1980, 19).

From this perspective, rights are justified demands for the socially guaranteed enjoyment of goods. In addition, some rights are "basic," in the sense that they are necessary for the enjoyment of other rights (Shue 1980, 19). A right is a *rational basis* for a *justified demand* in the sense that it provides a valid *reason* for its legitimacy. In other words, rights are *claims*: "To have a claim… is to have a case meriting consideration … to have reason or grounds that put one in a position to engage in [legitimate] claiming" (Feinberg 2001, 185).

Furthermore, rights can be conceived as *protections* against coercion, deprivation, and inhumane treatment. Rights protect the powerless from the powerful (Bobbio [1990] 1996; Ignatieff 2001; Jones 1999; Vincent 1986). As Norberto Bobbio asserts, human rights arise out of "specific conditions characterized by the embattled defense of new freedoms against old powers" (Bobbio [1990] 1996, xi). R. J. Vincent maintains that they are "a weapon of the weak against the strong" (Vincent 1986, 17). In this sense rights are political; in that they serve as a legal and political means to protect the interests of individuals against standard threats (Ignatieff 2001; Shue 1980).

Rights thus define what the individual is due, is justified in demanding/claiming, and/or is protected from as a matter of justice. As noted by Michael Perry, rights indicate what choices can never be made or those that must be made: "certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being" (Perry 1998, 5). In this sense rights function "as a fundamental moral limit" (Perry 1998, 5). In other words, rights comprise a normative commitment of *respect for persons*.

Therefore, rights claims are necessarily addressed to others (Jones 2001). "To have a claim-right is to be owed a duty by another or others" (Jones 2001, 53). A basic element of a right, therefore, is the identification of a duty generated by the right. Regarding what types of duties are

generated by rights claims, as Henry Shue demonstrates, rights entail three types of correlative duties:

(1) Duties to *avoid* depriving others of their rights
(2) Duties to *protect* the other from deprivation of the right
(3) Duties to *aid* the deprived (Shue 1980, 52-53).

The duty to *avoid* deprivation entails restraint and omission: the obligation to refrain from harmful action. The duty to *protect* entails the responsibility for establishment of norms, social practices, and institutions that enforce the duty to avoid deprivation. The duty to *aid* is an obligation to *provide* for those in need and those who have been victims of rights violations. These are the basic duties generated by rights.

In turn, rights and duties entail the identification of the agent(s) who holds the duty generated by the right. Rights necessarily require the identification of who is obligated to guarantee the protection of those rights. This identification also entails a justification for imposing the duty onto the specified agent (Jones 2001). The imposition of the duty onto to a specific agent is contingent upon the type of duty involved, the capability of the agent to fulfill the duty, and a moral justification for the imposition of the duty. Duties to avoid deprivation are attached to all relevant agents, individuals, governments, and other non-governmental organizations (e.g., corporations); this is the case because the duty to avoid deprivation only requires restraint and omission, *not* acting in a way that deprives others of their rights. It requires restraint as opposed to positive action (C. Jones 2001). Furthermore, there is a well-established prima facie moral prohibition against causing avoidable harm to others. In the case of the right to security of person, for example, individuals, governments, and non-governmental organizations all have a duty to avoid violating the security of persons, including acts of aggressive warfare.

In contrast, duties to protect and aid require that duty-holders *act* in some way, and not merely avoid certain harmful actions. These duties require the provision of some good. In the case of a right to security of person, agents are obligated to provide protection as well as providing aid to those whose security has been violated—to make them whole again as far as possible. Who holds these duties to protect and aid? What agents can protect all persons from violations of their security (and other vital interests) and provide aid to all who been victims of rights violations? Protection and aid on society-wide levels can only be provided by social institutions, in particular government agencies. They require institutional action (Jones 2001).

A basic reason for the establishment of government is to guarantee security of person, and each citizen has a reciprocal obligation to support that government (Hobbes 2008). This justification is stated in moral and capability terms in the American Declaration of Independence, which asserts: "that to secure these rights, Governments are instituted," and by President Abraham Lincoln who declared that the purpose of government is: "to do for the people what needs to be done, but which they cannot, by individual effort, do at all, or do so well, for themselves." On an international level the United Nations has recognized that every sovereign government has a basic *responsibility to protect* its citizens as well as innocent non-citizens when possible. This duty is referred to as the "Responsibility to Protect (R2P)" (International Commission 2001). For instance, if a sovereign national government commits or allows clear and significant violations of the human rights of its own citizens, committing crimes against humanity (e.g., genocide), then its claim to sovereignty is no longer legitimate, for it has invalidated the social contract by violating its primary responsibility to protect its citizens.

As noted above, the subject of justice is the basic institutional structure of society and rights as a matter of justice constitute "moral claim[s] on the organization of society" (Pogge 2001, 200). It is the primary duty of the state, of government, to aid and protect citizens' rights, and to avoid depriving citizens of those rights. Rights as justified claims to and protections of one's vital interests, call for the institutional structure of society and its legal and governmental systems, to be just. In the case of the protection of, and aid to the right to security of person, the agencies that primarily hold these duties are the departments or ministries of justice and defense, the police, and the military.

It is essential to point out that citizens, in turn, have a duty to support the establishment and sustainability of just institutions. This duty includes a duty to resist injustice. If we are due the protection of our rights, and social institutions hold the duties of aid and protection, then individual citizens hold a basic duty to resist and reform social and political institutions, laws, policies, customs, and practices that fail to provide that protection, or are intentionally designed to violate the rights of certain persons. There is a basic duty to resist injustice, not to passively submit to it. The duty to resist injustice is mandated by the imperative of duties for the *protection* and the *recovery* of rights under the unjust and violent conditions in which they have been lost. Moreover, if it is possible to act to prevent harm to others *and if* one refrains from acting, one is in essence complicit in the harm done (Naess 1974).

3.1 The Content of Rights

The conception of rights as justified claims/demands to social goods entails the presupposition that a right is always a claim for something, which raises the question of the content of rights—*what* are we justified in claiming? Testing the justifiability of the content of rights can proceed, for example, on the basis of the following questions (1) Is the particular content a vital, fundamental interest necessary for a life with dignity (Marcus Düwell et al. 2014)? Is the content of paramount importance/value? Is the particular content of such fundamental value that no reasonable person would have valid reason to reject that content (Jones 2001)? (2) Is the vital interest universal? Does it equally pertain to all persons and not a particular category of person? (3) Is the interest generally recognizable and applicable? (4) Is providing what is necessary to realize the interest feasible, or does it place unmanageable burdens on society (Cranston 2001; Nickel 2001)?

Generally, there are three broad basic categories of the content of rights, which reflect the vital interests of persons. This content is variously named: (1) negative liberty; (2) positive liberty; and (3) social and economic rights (Bobbio [1990] 1996; Buergentahl 1995; Ignatieff 2001; Jones 1999; Maritain 1958; Perry 1998; Vincent 1986). Another way to conceive of this content is as “freedom from” and as “freedom to” (Perry 1998, 45). This conceptualization of the content of rights has shaped modern political, legal, and moral theory (Berlin 1969).

3.1.1 Negative and Positive Liberty

The political philosopher Isaiah Berlin articulated a noted distinction between two conceptions of liberty: one negative, the other positive (Berlin 1969). Berlin defines negative liberty as the absence of coercive interference. Implicit in this conception is an "area within which a man can act unobstructed by others” (Berlin 1969, 122). As Berlin asserts: "Some portion of human existence must remain independent of the sphere of social control” (Berlin 1969, 126). Thus, negative liberty entails a zone of privacy immune from coercive interference, a zone wherein one is free to act so long as one does not cause harm to others (Mill 2003). It guarantees the right to conceive and pursue one’s own conception of the good life. As the philosopher H.L.A. Hart has argued, a right to liberty entails the presupposition that interference with another person’s freedom requires a moral justification. Having a general human right, by definition, entails having a moral justification for limiting the freedom of another person (Hart 1955). Rights to negative liberty protect individuals from coercive

interference, which includes the basic right to security of person (Shue 1980).

Rights to negative liberty can be justified based on the equal standing of persons. The equal standing of persons suggests that no person stands above others in terms of authority to decide how others should live. Equal persons should be able to autonomously pursue their own conception of the good life free of interference, consistent with the equal rights of others. To interfere without legitimate cause violates their standing as equals. Negative liberty includes these rights:

- Freedom of conscience and religion
- Freedom of thought and speech
- Freedom of association
- Freely pursue economic, societal, and cultural development
- Freely dispose of natural wealth and resources without prejudice
- Life
- Not be subjected to torture or to cruel, inhuman or degrading treatment
- Liberty and security of person
- Presumed innocence and due process
- Liberty of movement and freedom to choose residence
- Equality before the courts and tribunals
- Not to be subjected to arbitrary or unlawful interference

Positive liberty, on the other hand, is, not *freedom from* coercion, but *freedom to* determine one's own destiny: it is self-determination. Self-determination is the *core* concept of positive rights, and these rights entail a justified demand for equal civic and political participation. Self-determination "is the ability to live in accordance with one's own conscious purposes, to act and decide for oneself rather than to be acted upon and decided for by others" (Macpherson 1973, 109). There is a fundamental interdependence between self-determination and a right to political participation. Self-determination "is the democratic conception of liberty as a share in the controlling authority" (Macpherson 1973, 109), that is, as participation in the political decisions that affect our lives. Self-determination is contingent upon the right to democratic participation.

It can be argued, as Hannah Arendt, among others, suggest, that the true content of freedom is "participation in public affairs, or admission to the public realm" (Arendt 1963, 32). Self-determination can only occur within a public realm, in human association, suggesting that a "body politic" must be formed, wherein a public space is created for the exercise of self-determination. As Hannah Arendt put it: "a body politic which is the result

of covenant and 'combination' becomes the very source of power for each individual person who outside the constitutional political realm remains impotent" (Arendt 1963, 171).

From this perspective, positive liberty entails, not only negative protective rights, but positive rights to participation. Therefore, the second kind of rights pertain to justified claims, entitlements, and demands for participation in the social, civic, and political life of one's society on a free and equal basis. These rights are grounded in the basic human right of positive liberty or self-determination (Snauwaert 1992).

Positive liberty in turn points to a basic right to justification (Forst 2012). As free and equal persons, citizens have a basic right to ask for reasons of justification and to question those reasons; citizens have a right not be subjected to norms and practices that they would have a reasonable basis to reject (Rawls 1971; Scanlon 1998). As Rawls maintains: "Citizens are equal in that they regard one another as having an equal right to determine, and to assess upon due reflection, the first principles of justice by which the basic structure of their society is to be governed" (Rawls 1999b, 309). Respect for persons demands that each person has a *basic right to justification*, to be offered, and to offer valid justification for the social and political rules and institutions to which they are subjected. Justice is therefore based upon the principle *and* right of justification: the idea that the equal, intrinsic, human dignity of each person provides the foundation of a basic human right to receive justification, and a correlate duty to offer justification to others, as a fundamental matter of respect. This right provides a moral ground for self-determination, which in turn provides a rational basis for the legitimacy of a democratic structure and distribution of power (Forst 2012). Furthermore, freedom as self-determination is generally recognized as a vital interest such that reasonable persons would have reason to reject a political system that would prevent their equal participation. Conversely, they would support laws and policies that protect their right to equal political participation, to participation in the political decisions that affect their lives.

Positive liberty includes rights to:

- Moral and political justification
- Political liberties
- Equal suffrage, enfranchisement
- Serving on juries
- Freedom to dissent and protest
- Freedom to petition the government

3.1.2 Social and Economic Rights

At the core of social and economic rights are two basic considerations: (1) protection of the fundamental interests in having an adequate means to support life; and, in turn, (2) the idea of the fair value of liberty. Unless there are substantive social opportunities for its exercise, liberty is not real (Rawls 1993). Liberty requires not merely constraint but actual social resources and opportunities for the exercise of freedom. One is not capable of pursuing what one has reason to value without the substantive social opportunity to exercise one's freedom (Nussbaum 2011; Sen 2009). Freedom is substantive in this sense; its fair value needs to be guaranteed. The fair value of liberty leads to the specification of further social and economic rights, such as a right to work, a right to unionize, a right to collectively bargain, a right to counter-extractive liberty (freedom from economic exploitation), a right to safe working conditions, a right to education, a right to health care, food, and shelter, etc. (Bobbio [1990] 1996; Felice 1996; Falk 2000; Gutmann 2001; Maritain 1958; Perry 1998; Shue 1980; Vincent 1986). The fair value of liberty requires the fair distribution of social goods and opportunities.

Regarding the fair distribution of opportunity, the withholding of the means of life and labor is a potent type of coercive interference, "since the dependence on others for a living, which deficiency of access [to opportunity] creates, diminishes the area in which [persons] cannot be pushed around" (Macpherson 1973, 101). In this regard, Macpherson offers a conception of liberty as "*immunity from the extractive power of others (including the state)*," or as "*counter-extractive liberty"* (Macpherson 1973, 118). This concept would deny the unfair exploitation of one's labor, as well as other powers. Those who are unfairly forced to sell their labor are in essence compelled to serve the purposes of others rather than their own; self-determination is undermined by economic inequality.

It is important to point out here that coercive interference in the form of the extraction of labor power, among other powers, does not only occur in the public sphere but also in private life. Historically, the innate capacities and power of women have been exploited in the context of the family without such exploitation being viewed as a violation of their liberty (in both senses) (for example see Moller Okin 1991). Negative rights are in fact premised upon an artificial separation of the public and the private, which has legitimized such extraction. A part of this extraction for both workers and women is socialization into passive, subordinate ways of being.

The legitimacy of social and economic rights can be further justified in terms of what Henry Shue identifies as the "Transitivity Principle:" "If

everyone has a right to Y, and the enjoyment of X is necessary for the enjoyment of Y, then everyone also has a right to X" (Shue 1980, 32). As a matter of logic, if the rights to negative and positive liberty are justifiable, and if a fair distribution of social goods and opportunities are necessary for the enjoyment of their fair value, then social and economic rights are also justifiable.

Social and Economic rights include:

- Subsistence: an adequate standard of living, including adequate food, clothes and housing, and continuous improvement of living conditions
- Freedom from hunger
- Work, which includes the right of everyone to the opportunity to gain a living by work which he or she freely chooses or accepts
- Just and favorable conditions of work which ensure: Fair wages and equal remuneration for work of equal value, in particular women being guaranteed equal pay for equal work, safe and healthy working conditions, and reasonable working hours
- Freedom to form trade unions and join the trade union of choice
- Education—equal opportunity
- Take part in and benefit from cultural life

3.1.3 The Interconnection of the Three Kinds of Rights

It is important to note that it can be argued that all three kinds of rights are interconnected. Negative liberty, positive liberty, and social and economic rights are of no great logical distance from each other. Just as rights to negative and positive liberty (the right to freedom from coercion and the right to self-determination) are interconnected, so are social and economic rights. Without them negative and positive liberty are vacuous, and without positive liberty social and economic rights are threatened. As the legal philosopher H. L. A. Hart suggests:

> ...the ability to shape life for oneself and lead a meaningful life is something to be constructed by positive marshalling of social and economic resources. It is not something automatically guaranteed by a structure of negative rights (cited in Jones 1999, 75).

Liberty, security, and social welfare are all basic rights, necessary for each other and all other rights. They are inseparable (Bobbio [1990] 1996; Gutmann 2001; Maritain 1958; Perry 1998; Shue 1980; Vincent 1986).

It is important to point out that the conceptualization of all the rights suggested above are articulated in an abstract and general form. The conceptualization of rights in a general form calls for further deliberation of citizens to specify the content of these rights (Nussbaum 2006 78-79; Walzer 1996). This deliberation necessarily takes place within the specific cultural horizon of citizens in different nations and thus will generate a diversity of rights content that is nevertheless consistent with the general meaning of each right (Al-Daraweesh and Snauwaert 2015). In Part 2 will we explore specific rights pertaining to the basic questions of justice.

4. Spheres of Peace

The "sphere of peace" refers to the space where peace exists as well as the scope or range of peace: local, national, international, and global (Matsuo 2007). In general, the sphere of peace is a socio-political state of affairs that manifests within and between *societies* (Matsuo 2007); a space where the conditions of peace can arise, exist, and be enacted. Peace spheres are dynamic and relational; they can occur within multiple levels of human interaction within and across societies. The conceptualization of the sphere of peace is contingent upon how the scope of justice is conceived within and beyond the borders of the nation-state.

Local and national level peace spheres refer to the basic institutional structure of the domestic society and the relationships between citizens and their governments and other social institutions. A prevalent understanding of the scope of justice, and thus the sphere of peace, has been conceived as national. From this national perspective, the international arena is conceived to exist as an anarchy, a condition where there exists no higher legal or moral authority than individual nation-states (Hinsley 1986); justice stops at the border of the nation-state. Morality is grounded in and confined within the boundaries of the nation-state and, given that there is no functional international community per se, morality or law beyond the boundaries of the nation-state are unacknowledged and unseen. (Brown 1992). Beyond the nation-state there only exists the political power struggle between states, which generates a continual state of war in the sense that war is always imminent if not actual. Societies can be just and at peace within their borders, but external to those borders neither peace nor justice are seen as possible.

An alternative understanding of the sphere of peace and the scope of justice is one that concieves of and extends considerations of justice to the level of international society. From the perspective of this understanding, in addition to the basic structure of nation-states, the sphere of peace, including

justice, concerns the relationship between the governments of nation-states. The Treaty of Westphalia that ended the 30-year religious war of intolerance between Catholics and Protestants in Europe established and enacted the international right to national sovereignty (that each nation-state would possess exclusive power over its territory) *and* the international duty of non-intervention. These core principles weave together an *international society of nation-states* (Bull 1977; Nardin and Mapel 1992; Nardin 1983; Mapel and Nardin 1998). Within this international society, there is inherent equality between nation-states guided by the recognition of a state's right to self-determination and the universal obligation of nonintervention (Bull 1977; Nardin 1983). To implement the right to national sovereignty and the correlative duty of nonintervention, an international world order has been established consisting of a system of international institutions and regimes (laws, treaties, conventions). Within this system of world order, formal institutions have been created by nation-states for addressing political, economic, and legal issues. Peace spheres are conceived within the international system primarily as the absence of interstate warfare and international cooperation in economic, cultural, and political arenas.

It has been argued, however, that nation-states possess rights only as bearers and representatives of the rights of their citizens. From this perspective, rights and duties of nation-states as members of an international society are derived from the individual rights of the people they represent (Hinsley 1986; Hoffman 1996; Kant 1983 [1795]; Sharp 1973). The principles of national sovereignty and the duty of nonintervention rest upon the individual right of self-determination/liberty and the right to security of person (Held 1995; Hoffman 1981; Kant 1983 [1795]; Nussbaum 1997; Walzer 1996, 1997).

From this perspective, the scope of justice concerns the entire global moral, legal, and political order that guarantees the rights of all human beings, including equal membership and standing--the right to have rights. It transcends but includes the principles of international society by including the rights of every human being and not merely the State. This perspective further envisions the possibilities of a global moral community, a shared peace sphere encompassing all global civil society. Each person has equal standing in the human moral community and are recognized as free and equal persons within this community as instantiated by a system of human rights. Article 28 of the United Nations' *Universal Declaration of Human Rights* stipulates that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (UN 1948). Article 28 suggests that a just and peaceful society, on all levels from local and regional to the world order, is one that guarantees

and protects the human rights of all persons as a matter of justice; a dynamic, inter-relational global peace sphere where the conditions of peace and justice can arise, exist, and be enacted. It further invokes the duty to establish and support this global political and legal order.

These three levels of the sphere of peace and scope of justice will be explicated in Part 2 as a part of the inquiry into principles of justice, including rights and duties, pertaining to the basic questions of justice. Each level of the sphere of peace and the scope of justice will be considered for each basic question of justice.

5. Summary

This chapter discussed the conceptualization of the idea of peace, including the concepts of negative and positive peace. Negative peace was defined as the absence of violence, and positive peace as the presence of justice. In this discussion the idea of violence as the problematic of negative peace was discussed in terms of its basic definition as the infliction of avoidable harm, and the three basic forms it can take: direct, structural, and cultural. Historically, peace has been defined as the absence of war between states (Galtung 1969, 167). This condition has been referred to as "negative peace," negative in the sense that it is a state of affairs *free from* significant degrees of direct, physical violence. However, the idea of peace was expanded to include the absence of not only organized warfare but violence of all kinds, including structural and cultural violence. This expansion broadens the content of negative peace to include the absence of all forms of violence.

It was then argued that peace can be conceived more fruitfully in a positive sense: peace understood as the presence of justice. Furthermore, the ideas of justice and positive peace were conceived in terms of human rights and their correlative duties. A rights-based conception of justice as the core concept of peace was argued to be foundational in defining concepts of peace and in understanding and creating peace spheres from local to global levels of socio-political relations. Lastly, the sphere of peace as the space within which the condtions of peace may occur, was explored in terms of three levels: the nation-state, international society, and global society. The sphere of peace was seen to be contingent upon the conception of the scope of justice. Principles of justice pertaining to the basic questions of justice explored in Part 2 will be considered on each level.

Principles of justice, including rights and duties, however, require justification - that is, reasons that support their justified acceptability and legitimacy among citizens. This point leads us to a further inquiry: how shall

we go about considering the rational bases for the justification of the principles and values necessary for a just social order?

CHAPTER TWO

JUSTICE AND NORMATIVE JUSTIFICATION: AN APPEAL TO MORAL REASONING

For most of the history of justice there has existed the assumption that the social order was fixed by nature and that considerations of justice were confined within the view of a fixed hierarchical social terrain (Johnston 2011). However, the emergence of the idea of democracy and with it a democratic conception of justice posits that the basic structure of society, including its social institutions, are *not* fixed by nature, but open to human choice and thereby human assessment (Johnston 2011). Human beings are capable of exercising "constitutional choice." For example, in the *Declaration of Independence* Thomas Jefferson maintains that "whenever any form of government becomes destructive of these ends [life, liberty, and happiness], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its power in such form as to them shall seem most likely to affect their Safety and Happiness".

In keeping with this right, in the opening paragraph of *The Federalist Papers* (Federalist No. 1) Alexander Hamilton questions "whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force" (Hamilton, Jay, and Madison 2021 [1787])? Implicit in both Jefferson's and Hamilton's insights is the possibility of "constitutional choice," the supposition that human beings are capable of exercising choice in their system of government (Snauwaert 1993). As implied in the Jefferson quotation, constitutional choice entails the articulation of principles of justice, from which the design features of governmental structures are derived. Constitutional choice, in addition, applies equally to the modification of an already existing form, as was the case with the framing of the American Constitution, a modification of the Articles of Confederation. In addition, constitutional choice is not restricted to the establishment and assessment of national governments, but it also applies equally to all social institutions and thus basic structure of society (Snauwaert 1993). In keeping with the right to justification, the

terms of the basic structure of social institutions and thus of social cooperation should be a matter of justifiable choice (Forst 2012; Rawls 1971). The possibility of choice of the basic structure of society gives rise to normative political theory, including principles of justice, rights and duties, and shared political values. The work of normative political theory is to formulate and provide justification for the basic principles and values by which institutions are constituted and regulated, thereby bringing it legitimacy in the eyes of citizens, thus reconciling citizens with their government (Beitz 1979; Hegel 1991 [1821]; Rawls 2000a).

The principles and values of a just social order derived from the work of normative political theory constitutes what can be referred to as the "unwritten" or "invisible" constitution, which is necessary to interpret the written legal constitution and in turn, to interpret, evaluate, and justify various laws and policies consistent with it (Amar 2012; Tribe 2008). Elements of the unwritten Constitution include widely accepted norms and principles of justice (Amar 2012, xii). For example, the U.S. Constitution's opening words, "We the People of the United States, in Order to form a more perfect Union, establish Justice…" proclaims that a basic objective of the constitution was to "establish Justice." As constitutional scholar Akhil Amar suggests, "the written Constitution itself … had to be construed against the backdrop of the first principles of justice" (Amar 2012, 10). Such principles are constitutional because they are constitutive, they form the basic framework of principles that comprises the basic structure of society (Amar 2012, 275). The constitutional "text is inextricably intertwined with the implicit principles" (Amar 2012, 479). As Amar suggests: "America's 'constitution' encompasses cherished principles of higher law that are widely understood to limit American governmental officials, even if these specific principles do not appear explicitly in the terse text" (Amar 2012, 481).

However, the principles of justice and political values that serve as the regulating rules of institutions "must be not only verified but also validated. It is not enough to show that *if* certain criteria [principles and values] *are* employed, then a thing must be said to have a certain degree of 'goodness' [justice]; we must also show that these criteria *ought* to be employed" (Baier 1958, 75). So, in considering the justification of principles of justice, we need to not only consider the terms themselves, that is, the principles of justice and shared political values, but also the criteria or standards of validity upon which we can assess the justifiability of those values and principles. The claim that a principle is right or just presupposes that we have reason to affirm it, and that reason is not any reason as such, but a justifiable and thus valid reason. Normative justification entails *offering*

reasons for one's claims. Claims of justice thus require criteria for the determination of the justifiability of reasons. As Watt suggests: "to engage seriously in [moral reasoning] commits one to recognizing that *something* would constitute a reason for or against certain actions, otherwise the deliberation could have no content; there could be no way of deciding on an answer" (Watt 1975, 45). This is to say that "no answer which is better or worse than any other could be given to this question unless there were principles for accepting or rejecting reasons …" (Peters 1966, 121).

If normative claims of justice exist, then there must be a valid reason why a principle of justice is justifiable (Watt 1975). In other words, "We are thinking of the conditions which something must satisfy in order to be properly called" a political value and/or principle of justice (Baier 1958, 181). The justification of principles of justice thus presupposes criteria for the determination of that justifiability. The process of moral reasoning is one of deliberating and offering reasons that justify those principles (Baier 1954, 1958; Forst 2012; Habermas 1990, 1996; Rawls 1971, 2001; Scheffler 1981; Singer 2011). We can and should ask whether the political values and principles of justice and the judgments concerning laws, policies and practices based upon them are morally justifiable. What is the rational basis of the validity of our political values, principles, and judgments? Are there basic, primary standards or criteria to which we can appeal to evaluate the justifiability, and thus the legitimacy, of our values, principles, and judgments? If so, what is their source or grounding?

The central question, therefore, of this chapter is: On what basis can the principles of justice be justified? It will be argued that the moral justification of principles of justice and shared ethical values cannot be effectively achieved through appeal to a *correspondence* between principles and values *and* the *cognition of moral truths/facts*, nor through social acceptance alone, but through appeal to a type of moral reasoning that that seeks *consistency* between principles and values *and* fairness. In turn, the elements of fairness can be understood as the presuppositions of the logical structure of moral reasoning necessary for its actual exercise, *and/or* these elements of fairness can be understood as derived from a conception of persons as free and equal.

1. Approaches to the Criteria of Normative Justification

To explore the question of the rational basis of the normative justification of principles of justice, we can turn to an examination of the central historical contours of ethical theory in the Western tradition (note: a comprehensive, exhaustive examination is beyond the scope of this inquiry—only a pertinent selection of the most prominent ethical theories

and approaches are explored). Appeal to these contours comprises a *reconstructive* approach to normative justification and, in the sense that prominent theories are critically explored on the basis of which an alternative theory of normative justification is reconstructed (Habermas 1984, 1996). We begin with the historically prominent idea of the existence of moral truths and an independent moral order which can be comprehended and known by human intellectual reason—also known as "rational intuitionism" or the "intellectualist thesis". This approach to normative justification begins with systematic efforts to construct ethical theory grounded in an independent, universal moral order (first conceived by the ancient Greeks and running throughout the Western tradition of ethical theorizing). We will also discuss two alternative conceptions: (1) Immanuel Kant's attempt at basing ethical theory in practical reason, and (2) social acceptance as the basis of justification. This exploration will lead us to the main approach taken in this book, an appeal to moral reasoning. *Moral reasoning* is conceived as the process by which values and principles are affirmed as justifiable because they are consistent with the elements of fairness, conceived as the presuppositions of the logical structure of moral reasoning and/or as presuppositions of a conception of persons as free and equal.

In what follows we will explore the validity of historically prominent methods of normative justification. It will be argued that an appeal to moral reasoning to justify the principles of justice is the most viable alternative. We begin with the idea of moral truth.

1.1 The Cognition of Moral Truth

A prominent approach to the criteria for determining the normative justifiability of principles of justice, shared ethical values, and judgments has been to appeal to *moral truth* as reasons of justification. Historically this approach has been identified as "rational intuitionism" (Rawls 1971, 1993, 2001) or the "intellectualistic thesis" (Olafson 1967). This approach maintains that there exists an independent moral order written into the nature of the universe, independent in the sense that it is not a human construction as such but there are *moral facts* or *moral truths*. This view asserts that there is an objective, pre-existing, universal moral order that can be comprehended by human cognition, providing individuals with a justifiable claim to knowledge of the moral truth. The truth of moral principles of right, including justice, as well as ethical goods and values, and hence their justifiability, is a function of a *correspondence* between those principles and values *and* moral facts. From this perspective, moral principles, and ethical

values (moral predicates) denote independent and *morally real* attributes of the good and the right. On the basis of this perspective, the process of moral justification is grounded in the "discovery" of, and thereby the knowledge of those moral facts (Walzer 1983). Moral inquiry into justice is thus a function of *cognition.* In turn, these moral truths serve in rational deliberation as normative reasons of justification (Olafson 1967). That is, the values and principles that are affirmed are justifiable because they are grounded in the truth of an independent moral order cognized by individuals directly or by a philosophical or theological elite.

Historically, an appeal to moral truth has been common across many religious and philosophical traditions. In the Western tradition the method of authority of the moral truth is initiated in *circa* 380 BCE by the ancient Greek philosopher Plato in his highly influential dialogue, *The Republic* (Plato 1979). Plato maintained that there exists a fundamental and intimate symmetry between human consciousness and an independent moral order inherent in the universe. Human consciousness is a microcosm of that moral order. Given this basic structural symmetry between the mind and the universal moral order, by comprehending the universal moral order, the mind of the philosopher would be ordered and fulfilled in accordance with the nature of reality (Hadot 2002; Hirst 1973; Jaeger 1943, 1953). Plato argued that both justice and social order were contingent upon moral truth. Moral truth was especially important politically, for human beings are prone to a vast array of conflicting, often mistaken, opinions. Plato's central and legitimate concern, and the many who followed him, was the influence of false opinion, both intentional and unintentional, on political decision making. If society is governed by ignorance, then it will fall into disorder and injustice. Therefore, society should be governed by the moral truth and thereby by those who possess knowledge of the moral truth. Plato's highly influential answer is that those who are in possession of the moral truth, Philosopher-Kings and Queens, should govern society. For Plato, the key to a just and peaceful society was the establishment of the political authority of an elite who claimed to know the moral truth (Rauch 2013).

Aristotle, in turn, offered an alternative, naturalistic and teleological, account of moral truth and knowledge. Aristotle grounded ethical theory in a doctrine of human nature and a theory of natural teleology. He argued that individual beings, including human beings, are endowed with a distinct nature or essence that defines their proper function, end, and good, their *telos*. Beings, including humans, do not choose their own good. Our good is defined by our essence; and therefore, our ends are *apprehended* not chosen. The proper end is determined by the kind of being one is. In turn, the *right* is defined as the realization of that end or good. A principle of right, such

as a principle of justice, is normatively justifiable if it supports the realization of one's *telos*. These natural ends in turn pose restrictions on what is justifiable to choose. Principles of right are derived from the proper end that is peculiar to one's nature. The proper end and the moral principles of right which define the means to this end are necessary truths. In turn, since they correspond to the moral truth of our nature, they are normatively justifiable (Aristotle, Bartlett, and Collins 2011; Olafson 1967; Nussbaum 1995).

Aristotle's natural teleology was in turn adopted by Christian theologians, in particular Thomas Aquinas, who applied it to the nature of the moral personality of God. They maintain that goodness was the essence of God and that goodness constituted an inherent moral truth, based on which universal moral principles could be known. God's essence and moral personality constituted an independent moral order. The essence of the moral personality of God was the foundation of the justifiability of the good and the right (Olafson 1967).

Given these perspectives, the moral truth approach to normative justification maintains that the normative justifiability of principles of right, including justice, as well as ethical goods and values, is a function of a *correspondence* between those principles and values *and* the *cognition* of moral facts/truths of an independent moral order, including a knowable universal essence and *telos* of human beings. As discussed above, the approach of moral truth rests upon the foundation of *cognition* of moral facts, cognition of the truth of a moral order which exists independently of human construction.

1.2 Critique and Potential Alternatives to Moral Truth

It has been argued, however, that the moral truth approach misrepresents the nature of normative justification. One such argument is offered by Immanuel Kant's conception that the test of normative justification is not an appeal to the cognition and apprehension of external moral facts, but it rests upon an internal consistency between one's principles and the nature of a free, rational, and good will. Another alternative approach is that normative justification is addressed toward others and thus justification rests upon social acceptance. We begin with Kant's argument.

1.2.1 Kant's Internal Consistency Categorical Imperative Procedure of Justification

Kant identifies the foundation of morality as the free, autonomous choice of rational moral agents. The center of free choice is the rational will. Kant argues that there cannot be free will regarding moral choice if the will is determined by the dictates of the truth of an external independent moral order. A will can be free if and only if it chooses moral principles for itself, that is, freedom is contingent upon self-determination/self-legislation. Therefore, ethical theory requires a shift in understanding from cognition of moral truth to free choice. As Kant suggests: "The will is therefore not merely subject to the law but is so subject that it must be considered as also making the law for itself ..." (Kant 1964 [1785], 431). However, this view does not mean that Kant is recommending individual moral relativism. Individual moral relativism asserts that one's moral claims are justified on the grounds that the free choice of one's moral principle *itself* is sufficient justification for its normative validity. It is claimed that one's moral principles are justifiable solely because one chooses and affirms them. While free choice is a necessary condition for normative justification for Kant, it is not sufficient.

It is a free choice that is *consistent with* the nature of the rational will itself that is the test of normative justification for Kant. Kant (Kant 1964 [1785]) expresses this idea in the following ways:

> ...we merely make reason attend... to its own principles (404).
>
> All moral concepts have their seat and origin in reason... they cannot be abstracted from any empirical, therefore merely contingent, knowledge (411).
>
> Since moral laws have to hold for every rational being as such, we ought... to derive our principles from the general concept of a rational being as such... (412).

It is consistency with the nature of a free, rational will that is the test of normative justification and not the correspondence of principles with the cognition of moral facts. Kant shifts our understanding of normative justification from a cognitive correspondence theory of moral truth to an inward reflection on the consistency (or coherence) of our principles with the intrinsic nature of our rational will (Olafson 1967).

The test of consistency with the rational will for Kant takes the form of a "categorical imperative" (Kant 1964 [1785]). Imperatives are duties; they tell us what *ought* to be (398-391); they are *necessary* as commands of

reason (413). A hypothetical imperative is an imperfect duty pertaining to the right *means* necessary to achieve an end. A Categorical Imperative is necessary for its own sake, a perfect duty. The rational will has a perfect duty to be consistent with itself. That consistency takes the form of the categorical imperative in three formulations:

The Categorical Imperative — First Formulation (CI 1)
Act only on that maxim which can at the same time will that it should become a universal law. (421)
Act as if the maxim of your action were to become through your will a universal law of nature. (421)

The Categorical Imperative — Second Formulation (CI 2)
Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end. (429)

The principle of humanity as an end in itself. (430)

The Categorical Imperative — Third Formulation (CI 3)
So act as if you were through your maxims a law-making member of a kingdom of ends. (432)

These imperative tests of normative justification ask whether the adoption of a principle will contradict or be destructive of one's free will and whether treating humanity only as a means conflicts with itself, whether it contradicts itself. What Kant offers is an understanding of normative justification that turns to internal consistency between moral principles and the nature of the rational will, expressed in the forms of the categorical imperative, as the approach to justification. This turn constitutes a major shift in ethical theory: from cognition of moral truth to self-reflexive consistency.

Kant, however, retains a significant element of Aristotelian naturalism in his theory; it still rests on a metaphysical, naturalist conception of the nature of the human will. If, however, the remnants of Aristotelian teleological naturalism—that human beings have a distinct natural end to be realized—are discarded, there remains significant value in the direction to which Kant pointed: (1) free choice is necessary condition for, and thus an element of, normative justification; and (2) that choice should be restrained and regulated by some basic normative criteria which function as the basis of testing the justifiability of principles. In other words, rationality should be regulated by what is right and reasonable, and these criteria of right should not be understood as being moral facts or truths.

A third valuable Kantian insight is pointed to by the second and third formulations of the categorial imperative: moral reasoning is *intersubjective*, not merely an internal reflection within oneself. A basic assumption of moral reasoning is that it is *addressed to others*. As Rainer Forst maintains: "Respect for others… corresponds to an original duty toward others that must be 'apprehended' and 'acknowledged'…" (Forst 2012, 55). We exist in social relationship with others and the existence of others demands "a 'response-ability' toward, not for, others… 'the other' represents for me an 'unconditional' call to responsibility, one that I can reject only at the cost of violating morality. …it is the 'face' of the other that makes clear to me where the ground of being moral lies" (Forst 2012, 59).

In other words, normative justification pertains to choice from within a social point of view that all can reasonably accept (Baier 1958; Rawls 1999b). Moral reasoning, therefore, is a relational, social practice, in the sense that it proceeds from the recognition that we are in relationship with others, and in a way that reciprocally recognizes others as moral agents. Rationality implies reciprocity; what applies to oneself, must also apply to others. Moral reasoning pertains to what we owe to each other. Thomas Scanlon has demonstrated that "thinking about right and wrong is, at the most basic level, thinking about what could be justified to others on grounds that they, if appropriately motivated, could not reasonably reject" (Scanlon 1998, 5). In other words, what we owe to each other are reasons for our moral judgments that reasonable others would accept. What is disclosed by the recognition that moral reasoning is *addressed to others* is that normative justification is grounded in intersubjective acceptance and agreement. Can social acceptance itself be a singular criterion of normative justification?

1.2.2 Social Acceptance

Given that normative justification is addressed to others, one could appeal to social acceptance as the basic standard of justification. From this perspective, the social acceptance of values and principles is sufficient justification for their validity; if they are widely shared, they are justifiable. In other words, principles and values are justifiable if *we,* the members of the social group, *accept and affirm them*. From this perspective, their validity is grounded in the fact that they are a part of the recognized and affirmed way of life of a social group (Huntington 1996; Macintyre 2007; Sandel, 1984, 2009; Taylor 1992). This method clearly has a degree of legitimacy, for social acceptance is a necessary (but as discussed below, not sufficient) condition for the justification of the validity of ethical values and moral principles. Social group belonging and identity is a basic part of being

human. Human beings evolved in social groups; social group belonging was essential for survival and thus the development of the species. Life and death were contingent upon social belonging (Klein 2020). We are hardwired to seek belonging in social groups. Given our need for belonging we construct the social order in terms of group membership, and thus social acceptance of our values and principles is a necessary condition for their validity. However, the question remains whether the principles and values are justifiable because they are accepted or are they justifiable because their acceptability is justified?

Communitarians and other teleological ethicists maintain that normative justification can *only* be grounded in a substantive collective ethical identity, in the sense that what is morally right is derived from and justified by shared ethical values. Communitarians maintain that individual identity is ontologically grounded in culture (Sandel 1984). They assert a dialogical understanding of identity as formed in the context of comprehensive conceptions of the good life implicit in the culturally thick traditions of various communities (Taylor 1992). They maintain that the moral right dialogically emerges out of, and is thus grounded in, the web of human relationships which make up communal life. For example, Michael Sandel articulates the idea of a "constitutive community", constitutive in the sense that the collective ethical identity of the community forms the ethical identity of its members. Identity is not chosen; it is found within the ethical values of the community. In turn, the members' obligations are situated within the ethical identity of the community (Walzer 1983, 1987; Walzer and Miller 2007; Sandel 1984).

Alasdair Macintyre also maintains that the identity of persons is dialogically formed within the context of the community, particularly in the social "roles" that define communal life, that in turn contain obligations which one can only reject at the loss of identity. From this perspective, a coherent conception of morality is based in a conception of ethical value (Macintyre 2007). Valid justification of moral norms is based upon collectively shared ethical values forged out of communal dialogical relationships. Consistent with the communitarian perspective, morality is neither discovered in the fabric of reality (e.g., religious ethics, natural law ethics), nor is morality invented. Our cultural values are the ultimate sources of morality; we do not discover or invent them, we interpret them (Walzer 1983).

It can be argued, however, that even if something is believed and valued by a social group, the fact of social acceptance *itself* does not provide sufficient justification that it *should* be valued and accepted, for principles, values, and practices, even though widely shared, can, and historically often

have been, biased, exclusionary, culturally violent, and unjust. For example, slavery, racial segregation, and patriarchal gender discrimination all purported to be justified by appeal to widely shared values and social conventions. While social acceptance of common principles and values is essential for the order and functioning of society, the mere *fact* of their social acceptance is not sufficient to *normatively justify* them. Ethical values and moral principles require further normative justification on moral grounds that regulate what *should be* socially acceptable. This requirement speaks to a distinction between being accepted and *justified acceptability* (Forst 2012; Habermas 2011). The social fact that a belief in an ethical value or moral principle is operative in a particular cultural tradition does not justify, alone, its normative validity. To be normatively justifiable, social acceptance of ethical values and moral principles should occur *under particular normative conditions* defined by what others could not reasonably reject (Forst 2012; Habermas 1984, 1990, 1995, 1996, 2011; Rawls 1971; Scanlon 1998). A moral principle, or an ethical value, is justifiable, if it can be *mutually agreed to under specific normative conditions* and not based on social acceptance alone.

1.3 Moral Reasoning

The discussion of Kant's internal consistency approach to normative justification stripped of its teleological naturalism and the recognition of the necessity of intersubjective agreement points us toward a reconstructed post-metaphysical, freestanding conception of moral reasoning grounded in specific normative criteria. As Kurt Baier suggests: "Being rational is being prepared… to be guided, not by someone's orders, commands, or laws… but by the best judgments available" (Baier 1958, 57). The approach to normative inquiry that follows is an appeal to a *method of moral reasoning* to establish the normative justifiability of ethical values, principles of justice, and judgments. From this perspective, the justification of principles of justice and the judgments based upon them, as well as shared political values, are grounded in a particular process of moral reasoning (Forst 2012; Rawls 1971; Scanlon 1998; Habermas 1990, 1993; Rawls 1999b). As Thomas Scanlon suggests: "If we could characterize the method of reasoning through which we arrive at judgments of right and wrong, and could explain why there is good reason to give judgments arrived at in this way the kind of importance that moral judgments are normally thought to have, then we would, I believe, have given sufficient answer to the question of the subject matter of right and wrong" (Scanlon 1998, 2).

We are attempting here to identify primary reasons for the justified acceptability of our shared political values, principles, and judgments. What are the basic, primary normative standards or criteria to which we can appeal to evaluate the justifiability, and thus the legitimacy, of our values and principles? The judgment or claim that a principle is right or just presupposes that we have reason to affirm it, and that reason is not any reason as such but a justifiable and thus valid reason; claims of justice thus presuppose criteria for the determination of the justifiability of reasons. What normative criteria form the rational basis of justification? It will be argued below that we can test the normative validity of values and principles by appeal to reasons of *fairness* that are grounded in and presupposed by basic moral reasoning and/or derived from a conception of persons as free and equal.

From this perspective, we can look to the freestanding logical structure of moral reasoning itself, specifically, its *presuppositions*, for the criteria of justification. Moral reasoning is a form of argumentation and discourse that contains unavoidable "*presuppositions*," which are the *constitutive elements* of reasoning, in the sense that they define what reasoning is. They are necessary conditions or predicates for the very possibility of reasoning (Brune, Stern, and Werner 2017; Stern 2021). Presuppositions are analogous to the primary rules of a game that define what the game is, such that those rules are necessary conditions for the very possibility of playing the game. You cannot play a game of chess, for example, without knowing and accepting the rules that define chess. The presuppositions of moral reasoning are logically necessary if one is to engage in the practice of moral reasoning; one is necessarily committed to the presuppositional elements of moral reasoning if one is to engage at all in the actual practice of moral reasoning (Watt 1975; Peters 1966; Habermas 1990, 1993; Kant 1964 [1785]; May 2015). The rejection of such presuppositions "would entail a resolute refusal to talk or think about what ought to be done, which would constitute an abdication from a form of thought into which all in our society are initiated in varying degrees. No adducing of reasons for the guidance of conduct would be permissible thereafter" (Peters 1966, 115-116). Presuppositional forms of reasoning "are designed to remind anyone who so much as enters into argumentation that he is already participating in a normatively structured practice" (Habermas 1993, 76-77).

Furthermore, as described above, presuppositions can be "transcendental" in that they specify the necessary conditions for a practice to be possible; however, they can also be "performative". Performative presuppositions are those that are given expression by a practice, in the sense that a practice is envisioned when we presuppose it. For example,

democracy gives expression to equality as a performative presupposition of it; if we presuppose equality, then democracy becomes possible. It suggests the question: if we suppose equality for instance, or other possible presuppositions, then what principles of justice would we mutually agree to?

Alternatively, normative criteria can be derived from a conception of persons as free and equal (Honneth 2015, 1996, 2021; Nussbaum 1988, 1990, 1995, 2006; Rawls 1971, 2001; Zurn 2015). We can ask what normative criteria are presupposed in a conception of persons as free and equal, or what normative criteria would be identified if we ask what free and equal persons would mutually agree to under *conditions that represented them as free and equal*.

From within this perspective, moral reasoning is, therefore, discursive and procedural; it involves communication and deliberation with others *under specific normative conditions*. From this perspective, no independent order of moral reasons exists that takes priority over the discursive procedure of mutual agreement: "Only those norms that can successfully withstand this procedure count as valid (Frost 2012, 48)." In other words, moral reasoning involves a procedure of *construction*, a process of justification of principles through a procedure of deliberation that is structured in terms of *presuppositional normative criteria* (Rawls and Freeman 1999; Forst 2012). More specifically, the procedure of moral constructivism employs normative criteria as acceptable restrictions on reasons that parties may appeal to in order to justify the validity of principles; they comprise the standards of normative constraint. From this perspective, valid justification is constructed through a procedure of deliberative moral reasoning that deploys procedural normative constraints. In this procedure the moral legitimacy and force of the results of deliberation (the mutual agreement) are transferred from the normative validity of the criteria to those results. "The [normative validity] of the circumstances under which agreement is reached transfers to the principles of justice agreed to... What is just is defined by the outcome of the procedure itself (Rawls and Freeman 1999, 310-311)." The justified acceptability of the outcome of the deliberation is contingent upon the validity of the normative procedural constraints (Habermas 1990; Forst 2012; Rawls 1971). John Rawls refers to this constructivist conception as the idea of *pure procedural justice* (Rawls 2001); the justifiability of the moral principles of justice agreed to is constructed through a fair procedure of deliberation. From this perspective, we do not begin with principles of justice as they are given by appeal to moral truth and/or social custom; we begin with a set of presuppositional normative criteria that define constraints on the reasons we offer to justify our proposed principles and values. We now turn to the

question of the particular normative presuppositions of moral reasoning and justification.

This approach is modelled in Rawls's hypothetical thought experiment, the Original Position, which entails the deliberation of hypothetical rational representatives of the people who are charged with deliberating on and mutually agreeing to principles of justice that will regulate the basic institutional structure of society. Rawls designed the Original Position to model mutual, reciprocal agreement under fair conditions, or what free and equal persons would mutually agree to under conditions that model them as free and equal. Therefore, the parties in the Original Position are symmetrically situated in that they have equal standing, and they mutually recognize each other as free and equal persons instantiated in that they have equal decision-making power. They are also situated behind a "veil of ignorance" wherein they do not know their future place (social class, gender, religion, ethnicity, etc.) in the society for which they are choosing principles of justice. The veil of ignorance represents impartiality. Reciprocity is modelled by their charge to mutually agree to principles under the condition that if anyone of them have reason to reject a principle, the agreement is nullified. The Original Position represents a method of construction which models a process of justification defined in terms of consistency with fairness. In terms of fairness, it models acceptable restrictions on reasons to which parties may appeal to justify principles of justice. It models a process of mutual agreement wherein all the parties to the agreement deliberate in terms of what is right in general, unimpaired by partisanship or self-interest (Rawls 1971, 2001). Another, perhaps more basic, way to conceive this process, moreover, is the idea of *reflective equilibrium*—a process of reflection on the consistency or coherence between one's considered convictions and one's principles of justice (Rawls 1971, 2001).

As alluded to above, it is the elements of *fairness*, conceived either as the presuppositions of moral reasoning or as the presuppositions of a conception of persons as free and equal, that can serve as the basic criteria for the normative justification of principles of justice. These elements of fairness serve as basic normative criteria for the justification of principles of justice. As discussed above, as the foundation of the constructivist procedure of justification, they are the normative constraints on reasons that can be offered in justification of principles and values. As Amartya Sen (2009) notes:

> Perhaps the most far-reaching example of what is essential for an adequate understanding of justice is Rawls's foundational idea that justice has to be seen in terms of the demands of fairness. In this approach, the notion of

> fairness is taken to be foundational, and is meant to be, in some sense, 'prior' to the development of the principles of justice. I would argue that we have good reason to be persuaded by Rawls that the pursuit of justice has to be linked to – and in some sense derived from – the idea of fairness. This central understanding is not only important for Rawls's own theory, it is also deeply relevant to most analyses of justice… (pp. 53-54).

2. Elements of Fairness and the Criteria of Normative Justification

This approach to moral reasoning raises the question: What should be considered the elements of fairness as criteria of normative justification? As already anticipated in the discussion of Rawls's Original Position, it will be argued that there are at least four *elements of fairness* that can serve as normative criteria: equality, recognition, reciprocity, and impartiality. These elements define the meaning of fairness. They are analogous to the basic rules of a game, for as the basic rules of a game define the game and form the basis of its secondary rules, the elements of fairness define the criteria of normative justification. Moreover, the elements of fairness are interdependent, in the sense that they relate and depend upon each other, forming an integrated and dynamic concept of fairness.

2.1 Equality

As John Rawls demonstrates in his conception of *justice as fairness*, fairness is grounded in a recognition of and respect for the intrinsic equality of persons (Rawls 1971, 2001). A foundation of moral reasoning is the normative assertion of equality, the presupposition that every human being should be considered as possessing an equal, inherent value (Snauwaert 2020a; Kymlicka 1990). Respect structures a duty to offer each other justification for the basic moral norms that will govern their cooperative relationship, consistent with their standing as equals. Equality therefore can be considered as the basic premise of valid moral reasoning. Fairness requires that persons have equal standing. Equal standing ensures the equal consideration of interests. A valid moral norm must give equal weight to the interests of all affected. Equality expresses the point that "our own interests are no more important than the interests of others" (Singer, 2011, p. 111). As Kurt Baier explains:

> I take the following to be the point of view which we adopt when we perform the task of a critic of morality. I shall call it the point of view of morality. We are adopting it if we regard the rules belonging to the morality of the

> group as designed to regulate the behavior of people all of whom are to be treated as equally important 'centres' of cravings, impulses, desires, needs, aims, and aspirations as people with ends of the own, all of which are entitled, *prime facie,* to be attained. (I take this to be the meaning of 'treating them as ends in themselves and not merely as means to one's own ends) (Baier 1954, 123).

As discussed above, Kant (Kant 1964 [1785]) identified the presupposition that equal human dignity is foundational to morality and justice. This idea is expressed in the second formulation of his Categorical Imperative: "*Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end*" (Kant 1964 [1785], 429). This principle expresses the idea that there is a basic, universally binding moral obligation to respect persons as ends. This is the "*principle of humanity as an end in itself*" (Kant 1964 [1785], 430). It is other persons as ends, who possesses an equal inherent value and dignity, that obligates one to treat them with respect (Düwell 2014).

The normative assertion of equality is a rejection of a historically dominant view of human relationships grounded in an assumption of *inequality*. There has been a longstanding belief that human beings differ from each other categorically in capabilities and thus in social standing, and that these differences require a hierarchical system of social relations. For example, based in his doctrine of natural teleology Aristotle posits the unfortunate idea of "natural slaves": "It is evident then that there is a class of persons, some of whom are naturally free and the others naturally slaves, persons for whom the condition of slavery is alike expedient and just" (cited in Johnston 2011, 101). In terms of the distribution of social goods, this inequality leads to the distributive formula: If two persons are equals in social standing, then, as a matter of justice, their shares of goods should be equal. If they are unequal, then their shares should be unequal in proportion to the inequality in standing and capability that exists between them (Johnston 2011, 69).

This logic leads to a belief that considerations of justice are confined within the view of a naturally fixed hierarchical system of social relations (Johnston 2011). This system also entails a command-obedience relationship between equal and unequal persons, such that persons considered unequal do not have an equal power to make independent decisions. It manifests as a Hegelian master-slave dynamic (Fukuyama and Fasting 2021; Johnston 2011). Within a system of social relationships premised upon inequality what we owe to each other morally is determined by position in an unequal social hierarchy. From within the perspective of

equality, however, we owe to each other respect for our inherent dignity. Equality is both a transcendental and a performative presupposition of moral reasoning, a necessary presupposition of moral reasoning and thereby a criterion of normative justification. When we engage in moral reasoning, we presuppose that the addressee of our reasoning is morally equal to ourselves. This presupposition is necessary for any claim that the principles derived from our reasoning is normatively justifiable, for if we presuppose inequality, then we have invoked a command relationship and not a deliberative exchange between equal moral agents.

2.2 Recognition

The idea of equal dignity and respect for persons is grounded in the ancient Greek concept of "*thymos*", which gives expression to a basic human psychological demand for recognition and respect for one's inner dignity. "*Isothymia*" expresses a basic desire to be *recognized* as an equal (Fukuyama 1992, 2018). Following Hegel (Hegel 1991 [1821]), within which the idea of *recognition* (*isothymia*), along with David Hume, Adam Smith, Immanuel Kant, Johann Fichte, and Jean Jacques Rousseau (Honneth 2021), reappears in the history of Western philosophy, the possibility of moral relationships between persons (the ethical life), and when structured politically, between citizens, is grounded in and made possible by the reciprocal recognition of each person's equal dignity and right to freedom—in other words, the recognition of persons as free and equal (Fukuyama 1992, 2018; Rawls 2000a; Williams 1997; Honneth 2021, 2015; Zurn 2015). Such recognition comprises the threshold of moral consideration. In the process of recognition, the other ceases to be regarded as a mere object or thing and comes to morally *count* as a free and equal person, a "self-determining end in itself" (Williams 1997, 22). The realization of oneself as an end, as an equal, is contingent upon the *recognition* of the self as an end by others. Equality is thus *intersubjective*, based in reciprocal recognition. To be conscious of one's own dignity requires that it be recognized by others. In turn, moral relationships between persons and citizens in a just society require that this recognition be reciprocal. This leads to a basic moral imperative articulated by Hegel (and consistent with Kant's categorical imperative, although intersubjectively based): "be a person and respect others as persons" (as noted above, being conscious of being a person is contingent upon the recognition of others) (Williams 1997, 166).

Important for a normative understanding of recognition is the idea of respect for persons. Following Kant, respect for others involves the moral

restriction or constraint of our self-interest to treat others as both free and equal (Honneth 2021; Kant 1964 [1785]; Zurn 2015). Respect is a willing restriction of one's "self-love", and a giving of moral consideration to another person. Furthermore, individual autonomy and self-determination are contingent upon recognition. Recognizing the other expresses affirmation of the autonomy and capacity for self-determination of others. If we do not recognize the other as free and equal, then we cannot be conscious of our own freedom (if we are alone, for example, then freedom is meaningless—we become aware of our freedom only when we recognize others and are recognized by others) (Honneth 2021). In this sense, recognition is the normative authorization of our own self-determination as well as co-determination of our shared social life. As Axel Honneth suggests: persons who mutually recognize each other affirm the "authority to decide for themselves whether their shared and practiced norms merit approval" (Honneth 2021, 147). As such, these principles are the self-determined norms of our social life. Recognition is thus also an intersubjective concession to others of their authority to judge our shared norms and thereby to affirm each other as co-authors of our shared principles. Reciprocal recognition is therefore a condition for a normatively regulated society (Honneth 2021). Recognition is a basic presupposition of moral reasoning in that it is a necessary condition for both normative self-determination and co-determination. As such, recognition pertains to respect for persons.

Recognition can be further understood by appealing to Martin Buber's conception of I-Thou relationships (Buber 1970). The *I-Thou* relationship is an encounter, a meeting of subjectivities. In this relationship one is able "to meet and know the other in his concrete uniqueness and not just as a content of one's experience" (Friedman 1965, xv). This encounter is a recognition of the other in-itself. The *Thou* is the subjective interiority of the other. One is apprehending the other as a subject, as one who possesses a subjective interiority and dignity and not merely as an object. Buber also refers to this encounter as "inclusion" (Buber 1965). Inclusion, and hence the I-Thou relationship, entail the extension of one's subjective presence to meet the subjective presence of the other being one is encountering, without losing the distinction of one's own individuality. It is intersubjective and based in reciprocal recognition. In this experience one becomes aware that one's standing as an equal is intersubjectively and reciprocally constructed. As Buber suggests, "we live in the currents of universal reciprocity" (Buber 1970, 67). The I-Thou encounter is grounded in an awareness of that reciprocity. From the perspective of this experience, to harm the other is to harm oneself. From the perspective of the I-Thou relationship and

recognition, morality rests upon an awareness of our fundamental interconnection and our capacity to recognize and respond to the other authentically as a subject.

In contrast, the I-It relationship is characterized as a way of relating that objectifies the other. One relates to the other, not as a subject, but as an object to be analyzed, exploited, ordered, normalized, dealt with, and so forth. Objects possess neither interiority, nor inherent dignity. They are used in some fashion. Such objectification creates exclusion, excluding the other from the moral community and hence moral consideration. Such exclusion increases the likelihood of exploitation and violence. This process of objectification and exclusion is central, for example, to war propaganda that is designed to dehumanize the enemy. The other is transformed into an It, and this objectification is the foundation for justifying the mistreatment of others (Fornari 1975 [1966]; Keen 1986; Miller 1980). It is the relational dimension of dehumanization. As Paul Tillich puts it: "He who turns a human being (in the psychophysical sense) into a mere object suffers distortion of his own personal center... They all become depersonalized themselves... the circle in principle includes all human beings" (Tillich 1963, 38).

The I-It relationship was first conceived by Hegel as a metaphorical Master/Slave relationship, a relationship of domination and exploitation. This relation is based in a failure to achieve intersubjective, reciprocal recognition. It is a relation of opposition, coercion, and struggle, what Hegel (and others) refer to as the struggle for recognition (Hegel 1977 [1807]; Fukuyama 1992, 2018; Kojeve 1969; Williams 1997). Within the desire to receive recognition there is both the desire to be recognized as an equal, *isomythia, and* a desire to be recognized as superior to others or to be recognized for one's achievements that distinguish one from others in terms of value, *megothymia*. *Megothymia* underlies relationships that fail to achieve reciprocal recognition. In this relationship the Master receives recognition from the Slave whom he considers unimportant and hence deficient. It is a coerced recognition, a phony one. It is sheer self-affirmation and is self-subverting in that it brings about the opposite of its intention, a dead-end, only sustainable by force (Williams 1997). As will be discussed in Part 2, this struggle for recognition is a threat to reciprocal recognition and thus it underlies various forms of violence (direct, structural, and cultural) and injustice. Given that reciprocal recognition is essential for the realization of equality, it is a key element of fairness as a presupposition of moral reasoning. Moreover, it is also interrelated and interdependent with both reciprocity and impartiality, discussed below.

2.3 Reciprocity

As discussed above, moral reasoning and justification is a demand for reasons that can be *accepted* and *affirmed* by others (Forst 2012; Scanlon 1998; Habermas 1990, 1993). This requirement linked to equality and recognition suggests that "…the objections of any person who is affected… cannot be disregarded, and the reasons adduced in support of the legitimacy of a norm must be capable of being shared by all" (Forst 2012, 49). It constitutes *a reciprocity of mutual agreement*, which requires that the terms that regulate the moral and political relationship between citizens must be acceptable to all affected. The terms must be such that no reasonable person would have grounds to reject them (Rawls 1993, 2001; Scanlon 1998; Forst 2012). Reciprocity of agreement therefore requires that we "...arrange our common political life on terms that others cannot reasonably reject" (Rawls 1993, 124). As Thomas Scanlon suggests:

> When I ask myself what reason the fact that an action would be wrong provides me with not to do it, my answer is that such an action would be one that I could not justify to others on grounds I could expect them to accept. This leads me to describe the subject matter of judgments of right and wrong by saying that they are judgments about what would be permitted by principles that could not be reasonably rejected, by people who were moved to find principles for the general regulation of behavior that others, similarly motivated, could not reasonably reject. In particular, an act is wrong if and only if any principle that permitted it would be one that could reasonably be rejected by people with the motivation just described… (Scanlon 1998, 4).

This principle establishes a ground of justification—"categorically binding norms against whose validity no good reasons can speak" (Forst 2012, 21). *Reciprocity maintains that what one claims for oneself, one cannot justifiably deny to others.* Reciprocity of agreement is therefore the actualization of intersubjective mutual recognition.

Reciprocity is given precise articulation by Habermas in the two basic principles of his discourse ethics: "every valid norm has to fulfill the following condition: (U) *all* affected can accept the consequences and the side effects its general observance can be anticipated to have for the satisfaction of *everyone's* interests…" (Habermas 1990, 65), and "(D) only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity *as participants in a practical discourse*" (Habermas 1990, 66). In other words, "only moral rules that could win the assent of all affected in a practical discourse can claim validity" (Habermas 1993, 49-50). These principles are similar to Rainer Forst's *principle of general and reciprocal justification* (Forst 2012), which

stipulates that "…one cannot raise any specific claims while rejecting like claims of others" (Forst, 2012, 49), *and* "one cannot simply assume that others share one's perspective, evaluations, convictions, interests, or needs…" (Forst, 2012, 49)."

Reciprocity, furthermore, has a universal scope, extending ethical and moral consideration beyond the boundaries of a particular political or cultural group to all persons. As the political philosopher Amy Gutmann suggests:

> Reciprocity extends to all individuals, not just to citizens of a single society. It should encourage students to consider the rights and responsibilities of both a shared citizenship and a shared humanity with all people, regardless of citizenship. The very same value of reciprocity that supports the commitment to mutual respect in one society, among individuals of many different cultural affiliations, also supports a commitment to cultivate mutual respect beyond the borders of states, among individuals who represent the widest range of citizenships and nationalities (Gutmann 1999, 309).

2.4 Impartiality

In turn, to achieve *reciprocity* the principle must be free of the bias of exclusive self-interest; that is, it must be *impartial*. To gain legitimate general acceptance the moral claim or principle must be impartial, in the sense that it is good for all (Habermas 1990). "Bare-faced appeal to self-interest will not do" (Singer 2011, 93). Self-interest, however, has often been invoked as a justifying reason, which can be expressed as follows: If x is in my rational self-interest, then it is right to pursue it regardless of how it affects others. Or it can be expressed in terms of what has been referred to as a principle or maxim of indifference: "I am not to do anything in order to help others when they are in need, or to assist them in distress, unless at the time it is rational for me to do so, in view of my own interests" (Rawls 2000b, 172). We can ask, why is the lack of consideration of others independent of self-interest, insufficient morally? What is missing? What kind of social world/society would be generated if this principle was universally accepted and practiced? As John Rawls demonstrates, fairness entails impartiality (Rawls 1971, 2001): "A man whose moral judgments always coincided with his interests could be suspect of having no morality at all" (Rawls 1999a, 54).

At a basic level of understanding, to be fair is to be unbiased; fairness demands that we impartially consider the claims and interests of others. Impartiality is captured by the axiom that no one should be a judge in his

own case (Amar 2012). As James Madison declared in the Federalist Papers "[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity," which Alexander Hamilton reiterated and broadened: "No man ought certainly to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias" (cited in Amar 2012, 13). Commenting on this basic idea of fairness and impartiality, Amartya Sen writes:

> This foundational idea [fairness] can be given shape in various ways, but central to it must be a demand to avoid bias in our evaluations, taking note of the interests and concerns of others as well, and in particular the need to avoid being influenced by our respective vested interests or by personal priorities or eccentricities or prejudices. It can be broadly seen as a demand for impartiality (Sen 2009, 54).

Kurt Baier echo's this idea of impartiality:

> Moral rules are universal rules designed to override those of self-interest when following the latter is harmful to others. [Moreover,] the very *raison d'être* of a morality is to yield to reasons which overrule the reasons of self-interest in those cases when following everyone's self-interest would be harmful to everyone. Hence moral reasons are superior to [self-interest as justifying reasons] (Baier 1958, 309).

Impartiality as a criterion of fairness forms a basic kind of reciprocity. In a broad sense, fairness means treating equal persons equally and unequal persons according to their relevant inequalities, that is, "to each his due". For example, the principle of one person one vote is fair in that it treats equals equally. Progressive taxation is also fair, for its unequal treatment is based upon a relevant and arguably justifiable inequality—differences in income. In other words, to claim the validity of a principle for oneself and not for others is to violate impartiality as a kind of reciprocity, for in this case one is biased in favor of one's interests. What Forst conceives as the "principle of reciprocal justification" is an expression of impartiality in two different ways: First, the idea of the reciprocity of contents: "…one cannot raise any specific claims while rejecting like claims of others" (Forst, 2012, 49). Impartiality also entails the idea of the "reciprocity of reasons": "one cannot simply assume that others share one's perspective, evaluations, convictions, interests, or needs…" (2012, 49). In other words, the terms of the agreement must also be impartial in the sense that to project the specific meaning of one's terms onto others is to bias the agreement in one's favor. In the end impartiality is a requirement that our moral principles be good

for all and not favor oneself or one's social group to the avoidable detriment of others (Habermas 1990).

From this perspective, the justification of principles of justice is based in a type of moral reasoning grounded in consistency with elements of fairness as the criteria of normative justification. This process of moral reasoning determines the normative justifiable acceptability of principles of justice and shared ethical values by assessing the consistency or coherence between them and the elements of fairness.

3. Public Justification and Judgment

Public justification involves reflection on the *application* of justifiable principles of justice and political values to questions and matters of justice, including the justifiability of laws, public policies, institutional rules, structures, policies, and practices (Habermas 1993, 1996). Are our existing institutions consistent with our principles and valid political values? In what ways should they be reformed if found wanting? Should they be abolished? If so, what should replace them? Public justification thereby involves the exercise of judgment (Habermas 1993; Arendt 1992). The shared values and principles of justice that are justified in terms of fairness do not make up a mathematical algorithm that will automatically calculate what is right across all cases. These values and principles are guidelines that are applied during the exercise of judgment. Judgment is akin to taste. Just as there is no logical rule that can determine beauty in all cases, there is no general rule that will determine what is right and just in all situations (Arendt 1992). We need to apply our values and principles in determining what is right and just in specific cases. As discussed above, an appeal to moral reasoning in terms of fairness is intended to test the justifiability of principles of justice, and these principles are intended in turn to provide reasons of public justification for the laws and policies that govern the institutions of society (Rawls 1993, 2001; Scanlon 1998; Forst 2012). Accordingly, citizens "should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality" (Rawls 1993, 138). As Wendy Brown points out, public justification as the exercise of judgment is grounded in "specific forms of reason" such that "political power always materializes and is given shape by distinct rationality, a form of reason and its occlusions, a set of norms and its generative effects" (Brown 2019, 56).

Furthermore, judgment, as Kant demonstrates, is contingent upon the enlargement of the mind. One enlarges one's mind, one's perspective and capacity for judgment, by taking into consideration the judgments of others.

One's own judgment is informed by the judgments of others. One therefore does not make a judgment in isolation from others, but in communion with them. Judgment is a function of multi-perspective taking – taking into consideration the perspectives of others to inform your own judgment. This capacity depends upon one's ability of empathy, to take the other's perspective, and imagination, to hold that perspective in one's mind in the abstract. The greater the enlargement of the mind, the greater one's judgment will be informed by others and the sounder the judgment. Judgment is thus also discursive, entailing the necessity to communicate and justify one's judgments in public. It involves persuading and justifying to others the rightness of one's choice, claim, proposition, and recommendation.

Furthermore, judgment ultimately requires a public space, a public forum, wherein opinions and perspectives can be communicated (Arendt 1992; Rodowick 2021). Public justification as the exercise of judgment, therefore, requires a shared language (Gessen 2020). Deliberation is only possible if we speak in terms that are mutually understandable. Therefore, the possibility of mutual agreement is contingent upon a shared language (Habermas 1984, 1990)—modeled in Forst's principle of general and reciprocal justification above. This necessity has been acknowledged throughout history. For example, the ancient Chinese sage Confucius observed: "If language is not correct, then… morals and art will deteriorate; if justice goes astray, the people will stand about in helpless confusion. Hence there must be no arbitrariness in what is said. This matters above everything (cited in Gessen 2020, 96)." The 20th Century philosopher Hannah Arendt maintains that a shared language is essential for public deliberation, for the very existence of the acknowledgment of a shared, and thereby objective, reality is contingent upon it (Arendt 2005; Gessen 2020). She writes:

> We know from experience that no one can adequately grasp the objective world in its full reality all on his own, because the world always shows and reveals itself to him from only one perspective, which corresponds to his standpoint in the world and is determined by it. If someone wants to see and experience the world as it "really" is, he can do so only by understanding it as something that is shared by many people, lies between them, separates and links them, showing itself differently to each and comprehensible only to the extent that many people can talk *about* it and exchange their opinions and perspectives with one another, over against one another. Only in the freedom of our speaking with one another does the world, as that about which speak, emerge in its objectivity and visibility from all sides (Arendt 2005, 128; cited in Gessen 2020, 96).

Public deliberation and the possibility of mutual agreement concerning laws and policies are contingent upon a shared reality and a shared reality rests upon a common language (Habermas 1990; Rawls 1993), for public justification requires a mutually recognizable social point of view in the form of commonly shared justifiable values and principles (Rawls 1993). This point of view rests upon an overlapping consensus on justifiable principles of justice and political values (Rawls 1993). In other words, these recognized morally justifiable values and principles comprise a normative framework for public deliberation and the exercise of judgment. Without reference to the mutually recognized principles and values of a conception of justice public speech becomes merely rhetorical and/or ideological. Authentic public deliberation and thereby legitimate public policy require a mutually recognized framework of valid principles (Rawls 1993). These principles are public reasons of justification. This normative framework forms a "mutually recognized point of view from which citizens can adjudicate their claims of political right on their political institutions or against one another" (Rawls 1993, 9). As John Rawls suggests:

> Public reasoning aims for public justification. We appeal to political conceptions of justice, and to ascertainable evidence and facts open to public view, in order to reach conclusions about what we think are the most reasonable political institutions and policies. Public justification is not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept (Rawls 1997, 786).

Furthermore, as a matter of fairness, citizens have a civic duty to each other, what John Rawls refers to as the "duty of civility", to explain and justify their political preferences and opinions to one another in terms of valid principles of justice (Rawls 1993). It is a duty to appeal to justifiable principles of justice in the process of public justification as the exercise of judgment. As Rainer Forst argues, this duty to offer public justification is correlated with a basic *right to justification* (Forst 2012). Each person has a basic right to receive justification from others in matters of justice and in turn to provide justification to others; it is what we owe to each other. Justification extends particularly to the public square where citizens deliberate regarding the laws and policies and thus the regulation of the basic institutions of their society. Furthermore, principles of justice are necessary to adjudicate conflicts of interest that are an inevitable and perpetual part of human institutions and the basic structure of society. Principles of justice form the rules that specify the weight one should give

to the interests of others when they are in conflict with one's own (Scanlon 1998, 198). The work of principles of justice is to resolve these conflicts fairly. Hence, a public method of judgment as the application of principles and values of justice in the process of public justification of laws, policies, and practices is essential for a just society.

Moreover, as discussed in Chapter 1, unjust social structures and practices are sustained by invalid justifications and patterns of thought that are culturally violent; they are "used to justify or legitimize direct or structural violence… and thus rendered acceptable in society" (Galtung 1990, 291–292). An important part of judgment, therefore, is critical analysis of invalid justifications. Those who seek power often traffic in morally unjustifiable, ideological justifications that distort the exercise of judgment in the process of public justification. Critical analysis involves an understanding and critique of the functioning and impact of power within social institutions, knowledge, and analysis of the structural dimensions of social life, and the nature of ethical and moral justification. It requires that everyone submit their judgments to critical scrutiny as a test of their justifiability through the process of reflecting upon their consistency with the accepted principles and values of justice (Forst 2017).

4. Summary

Moral reasoning concerns the question of the justifiability and thus the normative validity of principles of justice and political values, and the judgments based upon them that pass the test of the elements of fairness as presuppositions of moral reasoning. To assert that a principle of justice is justifiable and thus should be affirmed is to make a claim that needs to be supported by valid normative reasons. The process of moral reasoning is one of offering reasons that justify those claims (Baier 1954, 1958; Singer 2011; Scheffler 1981). It involves a procedure of *construction*, a process of justification of principles through a procedure of deliberation that is structured in terms of *normative criteria* (Forst 2012; Rawls 1971, 1999b). Normative claims are justifiable in relation to their consistency with the normative criteria that regulates deliberation; as such the principles are justified in terms of normative rightness rather than moral truth (Habermas 1990; Forst 2012; Rawls 1990). What should count as a valid reason of justification?

Moral reasoning is a form of argumentation and discourse that contains unavoidable "presuppositions," which are the *constitutive elements* of reasoning; they are necessary conditions for the very possibility of reasoning (Brune, Stern, and Werner 2017; Stern 2021). The presuppositions of moral

reasoning are logically necessary if one is to engage in the practice of moral reasoning. Following the insight of John Rawls, Jürgen Habermas, Karl Baier, Rainer Forst, Amartya Sen, among others, it is the elements of fairness that constitute the presuppositions of moral reasoning, and therefore, the elements of fairness (equality, recognition, reciprocity, and impartiality) can serve as the basic criteria for assessing the justifiability of principles of justice and shared political values.

Furthermore, moral reasoning entails not only justification but the *application* of valid, shared values and principles to matters of justice, including the justifiability of laws, public policies, and institutional rules, structures, and practices (Habermas 1993, 1996), as well as the critical analysis of unjustifiable culturally violent ideologies. *Judgment* pertains to this application (Habermas 1993; Arendt 1992). Values and principles are the common language and normative criteria that are applied in the exercise of judgment. We need to apply values and principles in the determination of what is right and just in specific cases.

There are, therefore, two kinds of justificatory arguments at work in the exercise of judgment. The first kind are *coherence or consistency arguments*: exercising judgment to assess the consistency between justified ethical values and principles of justice and policy recommendations. That is, if one can demonstrate that one's policy recommendation is consistent with morally justifiable values and principles, then that consistency/coherence provides validity and thereby justification for the policy recommendation. The second type of justificatory arguments are *realization arguments*: if one can demonstrate that one's policy recommendation will result in the *realization* of a justifiable shared value or values, then that realization provides validity and thereby justification for the policy recommendation.

The centrality of moral reasoning and judgment to peace and justice as conceived in this chapter points us toward the important question of how to develop the capacities of moral reasoning and judgment? What can be considered as the best pedagogical approach to this development? What would constitute a framework for teaching peace as a matter of justice?

CHAPTER THREE

TEACHING PEACE AS A MATTER OF JUSTICE: A PEDAGOGY OF MORAL REASONING

This chapter presents a philosophical conceptualization of a process-oriented, inquiry-based pedagogy grounded in the logical structure of moral reasoning and judgment. This pedagogy is referred to as a *pedagogy of moral reasoning*. Its' employment is essential for the development of students' moral reasoning and judgment capacity, for this capacity cannot be transmitted directly but can only be developed through exercise and practice. As has been argued so far, the capacity of citizens to engage in moral reasoning is necessary for the pursuit of peace and justice, including reconciliation with their government and society; therefore, the educational cultivation of the capabilities of moral reasoning and judgment is of paramount importance.

1. A Process-Oriented, Inquiry-Based Pedagogy

A process-oriented and inquiry-based pedagogical approach, as articulated in the philosophies of education of John Dewey, Paulo Freire, and Betty Reardon, will be presented as foundational to a pedagogy of moral reasoning and hence the educational development of moral reasoning and judgment. While elaborated in different and unique ways, Dewey, Freire, and Reardon each offer philosophical conceptualizations of process-oriented, inquiry-based pedagogies. Taken together they form an orientation to a pedagogy of moral reasoning that proceeds from the insight that such reasoning can only be developed through its practice and exercise and not merely transmitted to the student (Rodowick 2021).

1.1 John Dewey

John Dewey defines education as the "reconstruction or reorganization of experience which adds to the meaning of experience, and which increases ability to direct the course of subsequent experience" (Dewey 1916, 76).

Experience is trying *and* undergoing the consequences of activity; experience is *awareness* of trying and undergoing—that is, awareness of the consequences and meaning of activity. The reconstruction or reorganization of experience refers to the development of the capacity to draw on one's previous experience and developed capacities within present experience. Reconstruction of experience means that the person has established powers (what Dewey refers to as "habits") that can serve as resources in the direction of action and experience. The growth of cognitive capacity is cultivated through *reflection on experience.* It is *reflection* on experience, and not merely activity or experience as such, that is the developmental element in education. Reflective experience is a process of inquiry grounded in a felt problem, a hypothesis and experimental testing. Therefore, "the quality of mental process, not the production of correct answers, is the measure of educative growth…" (Dewey 1916, 99/176).

From this perspective, the m*ost valuable knowledge is knowledge of what counts as knowledge,* which is a mode of practice, a process by which a proposition is justified as knowledge instead of being mere opinion or dogma. As Dewey suggests: "Such knowledge never can be learned by itself; it is not information, but a mode of intelligent practice, a habitual disposition of mind. Only by taking a hand in the making of knowledge, by transferring guess and opinion into belief authorized by inquiry, does one ever get a knowledge of the method of knowing" (Dewey 1995 [1910], 395). From Dewey's perspective, educational environments should therefore "become laboratories of knowledge-making, not mills fitted out with information-hoppers ..." (Dewey 1995 [1910], 398). This process-oriented, inquiry-based approach to education emphasizes the development of the capacity to think and reason, while maintaining that reasoning cannot be taught as a process of transmission but can only be *developed through practice*, through the exercise of reason and judgment.

1.2 Paulo Freire

The Brazilian educator Paulo Freire also articulates a process-oriented, inquiry-based approach to education. To counter the injustice of dehumanization and oppression and to liberate the powers of oppressed persons Freire employs a problem-posing, inquiry-based, dialogical, critical pedagogy. Freire's problem-posing pedagogy seeks to re-present taken for granted "truths" as problems – for example, instead of Columbus *discovered* America, one proposes Columbus *invaded* America. By asserting this proposition, taken for granted assumptions of truth are re-presented as problems, thus inviting inquiry and dialogue. In turn, it is through engaging in inquiry and dialogue that the

student's powers are liberated and empowered. The student's critical thinking powers are developed, empowering her to participate in a critical encounter with the world. The student in other words not only learns to read texts but learns to *read the world.* This capacity speaks to the development of the internal power of *critical consciousness* (Freire 1970).

1.3 Betty Reardon

Betty Reardon, one of the modern founders of the field of peace education, also advocates a process-oriented, inquiry-based pedagogy, which she refers to as a pedagogy of reflective inquiry. Reardon articulates three forms of a pedagogy of reflective inquiry: critical/analytic; moral/ethical; and contemplative/ruminative (Reardon and Snauwaert 2011; Reardon and Snauwaert 2015a; Reardon 2010a).

Critical/analytic reflection pertains to the discernment of power, an understanding and critique of the functioning of social institutions, knowledge, and analysis of the structural dimensions of social life, and the distribution and impact of power, institutions, and structures on the quality of life.

Moral/ethical reflection includes the processes of moral reasoning to normatively justify principles of justice. Moral reflection is also guided by normative principles in the exercise of moral judgment. Moral reflection involves the application of principled moral reasoning to judgments concerning questions of justice. Reardon emphasizes principled moral reasoning as fundamental to political efficacy and the education of cosmopolitan citizens.

Contemplative/ruminative reflection is a wider sphere of reflection, which makes space for affect and intuition within moral reason. It cultivates self-awareness through which citizens become agents of social and political justice. Contemplative reflection is conceived as critical self-examination regarding our internal motivations; it refers to a reflection on what is meaningful and valuable. Contemplative reflection is essential for ethical commitment and for empathic moral responses to the dignity of other persons.

Reardon argues that these three forms of reflective inquiry comprise a pedagogical means that develops the human capacities and transformative skills necessary for the actualization of peace and justice.

Dewey, Freire, and Reardon each offer philosophical conceptualizations of process-oriented, inquiry-based pedagogies of reflective inquiry that cohere with the nature of moral reasoning and judgment outlined in Chapter 2. Together they form a compelling framework for the development of a

pedagogy of moral reasoning and judgment. Details about the employment of moral reasoning and judgment in pedagogical processes and inquires will be elaborated going forward. As noted above, moral reasoning and judgment cannot be "taught" as such. What the nature of moral reasoning and judgment, and the educational orientations outlined above, suggest is that *the capacity for reasoning and judgment can be developed only through practice.* It is their *exercise* that leads to their development (Rodowick 2021).

This foundational point raises the following question: if the development of reasoning and judgment can only occur through exercise and practice, then on what basis is the type of practice appropriate to the development of student capacity to be determined? One promising way, developed by the educational psychologist Jerome Bruner (among others, Dewey for example), is to look to the "logical structure" of the specific subject matter being taught. To uncover the practices that comprise a pedagogy of moral reasoning pertinent to peace studies we can look to the logical structure of peace studies, and specifically to the logical structure of moral reasoning and judgment presented in Chapter 2.

2. The Logical Structure of Peace Studies and the Pedagogy of Moral Reasoning

The emphasis on the pedagogical approach focused on the logical structure of the subject matter is on helping students understand the logical structure of peace as a matter of justice, in two basic ways: through comprehending its fundamental ideas and participating in the methods of inquiry characteristic of the subject matter (Bruner 1965).

2.1 Fundamental Ideas

Understanding the fundamental ideas of a discipline is necessary for comprehending the details of the subject matter, for the application of knowledge, for recognizing problems, and for understanding interrelationships (Bruner 1965). The fundamental ideas of the normative dimension of peace studies include the concept of peace understood as a matter of justice, and related principles of justice including values, rights and duties defined by the basic questions of justice discussed below.

In Part 2 the pedagogy of moral reasoning concerning the justification of principles of justice, and the application of justifiable ethical values and moral principles of justice to specific cases of policy, practice, and

institutions, will be explored within the context of these basic questions of justice:

- *Whose Security?* Who should have an equal right to security of person?
- *Who Belongs?* Who should be considered an equal citizen and thus a full participant in the society? What determines membership and standing in the society?
- *Whose Truth?* What conception of truth and thereby reality should be affirmed? What is the valid basis of the determination of truth?
- *Who Gets What?* How should the basic goods and resources of the society be distributed?
- *Who Decides?* Who should have political decision-making authority? Who should have power (the first question of justice)?
- *Whose Resistance?* Is there a right and duty to resist and redress injustice? If so, what principles of corrective justice should guide that resistance? Who should bear this duty to resist?

This exploration will provide background understanding regarding the question of justice as well as demonstrating the pedagogy of moral reasoning. Answers to these questions of justice are necessary for the establishment of a just and peaceful societies on national, international, and global levels. They comprise the *constitution* of a *just* society. As students exercise moral reasoning and judgment in the exploration of basic questions of justice, a framework and process for the conceptualization of a just society emerges. The answers to these questions in terms of specific principles, policies, practices, and institutions can be thought of as forming a *constitution of a just and thus peaceful society.* As discussed below, students can be pedagogically engaged in a process of articulating and defending a peace constitution through the pedagogy of moral reasoning.

These basic questions of justice are structured in terms of the social goods and ethical values that they involve, the principles of justice (rights and duties) that are pertinent to and necessary for their fair resolution, and the criteria of fairness as reasons of justification for those generally shared goods and the principles of justice. In turn, these principles and goods provide a foundation for the establisnment and enactment of just laws and policies and a well-ordered, just society. Each of the basic questions of justice forms a particular context within which principles of justice (including rights and duties) can be identified and justified that are *specific* to that context. Although the formulation of the contexts of justice offered here are distinct from other normative political theories, they draw on

foundational insights from those theories, particularly from the work of Rainer Forst and Michael Walzer (Forst 2002; Walzer 1983).

Rainer Forst maintains that when considering questions of justice there exists at least four different normative contexts: ethical, moral, legal, and political. The ethical context refers to the consideration of values and social goods; the moral context refers to the consideration of moral norms and principles of justice; the legal context refers to the consideration of the law and the person as a bearer of legal rights; and the political context refers to consideration of government structure and persons as citizens (Forst 2002). Each context has its own normative considerations, justice concerns, and interconnections between these contexts.

Walzer's theory of justice is premised upon the insight that general social goods can only be specified within cultural contexts. The argument proceeds as follows: The meaning and value of social goods is situated within, and relative to, the cultural context. The logic of the justice of a distribution of a social good is implicit in the culturally shared understanding of the social good. The shared meaning of the social good contains the criteria which should govern its distribution. As Walzer states: "Social goods have social meanings, and we find our way to distribute it through an interpretation of those meanings. We search for principles internal to each distributive sphere" (Walzer 1983, 19). Since each social good has its own shared meaning, and in turn, its own inherent distributive logic, it constitutes a sphere of justice, defined by clear contextual borders.

From the perspective of both Forst and Walzer, considerations of justice and principles of justice are therefore context-specific. This understanding offers a framework for the specification of context-specific principles of justice. The contexts that will be explored are grounded in the basic questions of justice. It is also important to note that the basic normative justification of the principles of justice in each context rests upon the criteria of fairness and a mode of moral reasoning based in fairness discussed in Chapter 2. In other words, the principles of justice within each context remain within the overall framework of moral reasoning in terms of fairness.

2.2 Methods of Inquiry

The *methods of inquiry characteristic of the subject matter* form the second element of its logical structure (Bruner 1965; Dewey 1995 [1910]; Scheffler 1981). The approach to moral reasoning and judgment discussed in Chapter 2 comprises the core method of inquiry of the normative dimension of peace studies. The justification of principles of justice and the judgments based upon them, as well as shared morally valid political values,

are grounded in a particular process of moral reasoning (Forst 2012; Habermas 1990, 1993; Rawls 1971, 1999b; Scanlon 1998). These methodological procedures of moral reasoning and judgment form the inquiry element of the logical structure of a normative approach to peace studies education and employs these methods in the process of teaching peace as a matter of justice. From within this perspective, the pedagogical practice of moral reasoning pertinent to the study of peace as a matter of justice, therefore, should mirror the structure of moral reasoning as a practice. A pedagogical framework, in turn, can be offered that consists of the following components.

2.2.1 The Practice of Normative Justification

The pedagogical practice that follows from the method of moral reasoning engages students in reasoning about the normative justification of principles of justice and shared public values. Students can be engaged in the practice of moral reasoning by reasoning about the following questions of normative justification within particular contexts as described below and in Part 2:

- Is your choice of principles of justice consistent with the criteria of fairness?
- Are your values consistent with the criteria of fairness?
- Would others agree that your choice of principles and values are consistent with fairness?

2.2.2 The Practice of Judgment

The exercise of judgment is understood as the application of justifiable principles and values to specific basic questions of justice. Regarding the pedagogical exercise of judgment, identified justifiable principles of justice and shared ethical values can be applied to the basic questions of justice at the level of laws, policies, practices, and institutions. Here students could be asked to apply those principles and values to specific cases that highlight basic questions of justice, a process that serves to exercise their capacity for judgment. Students can be asked: In response to basic questions of justice, are their judgments regarding laws, policies, practices, and/or institutions consistent with their principles and values?

The exercise of judgment necessarily involves critical analysis. Current laws, policies, and practices can be critically explored to see if they are justifiable in terms of their consistency with their principles and values as

instantiating their self-understanding of who they are and want to be. Furthermore, through the exercise of judgment and critical analysis not only can the student's capacity for judgment and critique be developed, but through such exercise their capacity for Arendt's "thinking" as the capability to be self-reflective and thus to say *no* to unjust laws, policies, practices, and institutions (as discussed in Chapter 2) can be developed.

3. The Peace Constitution Project

A general, overarching pedagogical exercise that can be employed is the formation of a peace constitution through moral reasoning regarding the basic questions of justice as explored in Part 2. The project is to construct a constitution of a just and peaceful society comprised of basic principles of justice pertaining to the basic questions of justice discussed in Part 2. A "constitution" is a declaration and/or statement of principles of justice that articulates the fair terms of the regulation of the institutions of society: it is a statement of what a just society should be, defining a just society in principle. At the end of each chapter a peace constitution template pertinent to the basic question of justice being explored will be outlined. Those templates conform to the following form.

3.1 Peace Constitution Basic Template

1. Summarize the basic question of justice being considered.
2. Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic question and choose a set of principles of justice.
3. Articulate a justification of those principles by employing the elements of fairness. From the moral point of view of fairness, are the principles justifiable?
   i. Equality: Does it recognize and treat all persons as equals?
   ii. Recognition: Is it consistent with respect for persons?
   iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
   iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4. Conclude with a summary and statement of the principles.

3.2 Structure of the Peace Constitution Project

Student groups of approximately 5 members are formed.

1. For each basic question a group statement will be crafted based upon individual reflections.
2. Each member will provide an initial written draft of their answers to, and justification of principles of justice pertaining to, the basic question of justice under consideration.
3. Each member will then share their initial draft with the group *and* the professor.
4. The group will meet in and outside of class to discuss and formulate a draft of the statement based upon each member's individual draft. Both majority and dissenting opinions can be articulated.
5. By the specified date in the course schedule the group should submit a statement of the answer to each of the basic questions of justice--these statements form the sections of the constitution.
6. The instructor will then comment and suggest possible revisions--revise accordingly.
7. At the end of the course the group will combine the sections into one final document with an introduction and conclusion. The conclusion should make a final statement about the vision of a just and peaceful society.
8. Each member will also submit an individual 1–2-page reflection on the process of the formation of the constitution project and their contribution to the final document.

The portion of the peace constitution template will be presented at the end of each chapter of Part 2. This project engages students in the logical structure of moral reasoning and judgment as they explore and construct a constitution of a just and peaceful society comprised of their reflection on the basic questions of justice. We now turn to Part 2 and the contextualization of justice in terms of the basic questions of justice.

PART 2

THE BASIC QUESTIONS OF JUSTICE

In Part 2 the exercise and practice of applying moral reasoning to justify principles of justice, and the exercise of judgment as it applies ethical values and moral principles of justice to specific cases of policy, practice, and institutions, will be explored as a pedagogical process within the context of five basic questions of justice:

- *Whose Security?* Who should have an equal right to security of person?
- *Who Belongs?* Who should be considered an equal citizen and thus a full participant in the society?
- *Whose Truth?* What conception of truth and thereby reality should be affirmed? What is the valid basis of determining truth?
- *Who Gets What?* How should the basic goods and resources of a society be distributed?
- *Who Decides?* Who should have political decision-making authority; who should have power?
- *Whose Resistance?* Is there a right and duty to resist and redress injustice? If so, what principles of corrective justice should guide that resistance? Who should bear this duty to resist?

Exploration of the above questions will provide background understanding of contextual issues that define and frame possible principles of justice and demonstrate the pedagogy of moral reasoning and judgment. Answers to these questions of justice form the fabric of a *constitution* of a *just* society. Through exercise of moral reasoning and judgment, Part 2 offers a framework and process for the conceptualization of such a society as part of a pedagogical practice. As noted in the Introduction, the exploration of the basic questions of justice is not meant to be an exhaustive treatment. Rather the approach taken is illustrative, presenting exemplary possibilities as a means for the exercise and practice of moral reasoning and judgment. The main purpose is not necessarily to determine *what* readers and students should think but *how* to think about the basic questions of justice that are foundational to peace and justice.

CHAPTER FOUR

WHOSE SECURITY?

The question *Whose Security?* pertains to who should be protected from aggression. Aggression is the crime of the unjustified use of force resulting in direct violence (the possible justification of the use of force will be discussed in detail in Chapter Nine). Perhaps the most prominent form of aggression is the unjustified military invasion of a nation. As Michael Walzer puts it: "Every violation of the territorial integrity or political sovereignty of an independent state is called aggression" (Walzer 1997, 52). Aggressive warfare "interrupts peace ... peace-with-rights a condition of liberty and security that can exist only in the absence of aggression itself" (p. 51). What Walzer is suggesting is aggression violates the basic right of security of person. Security of person is a vital interest, a fundamental good. Without being free from physical violence, including the threat of violence, a decent life is difficult, at best, to realize.

The realization of our human potential is significantly diminished under the conditions of direct violence. To be invaded and occupied by a hostile foreign army, for example, greatly diminishes the possibility of a good life. The same is true for living under the threat of a criminal organization or a hostile, threatening police force. If security of person is a fundamental interest, then it is morally wrong to perpetuate direct violence against persons. Furthermore, because security of person is a vital interest, it can be argued that we are morally justified in claiming and demanding it. In other words, it can be asserted that we have a *human right* to security of person. Of course, appeal to a human right to security of person is *one* possible answer to the question *whose security.*

The claim of a human right to security of person is a right that transcends national borders. It is grounded in the cosmopolitan idea that every human being is a member of a global moral community. The idea of a global moral community is challenged by two prominent theories of international relations: political realism and international society. These two theories assert the idea of *national security*, *rejecting* any claim of a human right to security of person (but as discussed below a national right to security of person is recognized). These theories maintain that individual persons do

not have moral and legal standing outside of national borders and thus do not possess justifiable demands for security *as* individuals globally.

In what follows, political realism, international society, and a human right to security of person grounded in membership in a global moral community will be explored. The fundamental question to reflect and deliberate upon is: which conception of security is justifiable from the moral point of view of fairness (equality, recognition, reciprocity, and impartiality)? Furthermore, what possible principles of justice, including rights and duties, follow? We turn first to the theory of political realism.

1. Political Realism

Realism is a political theory of international relations that challenges the possibility of the moral and legal standing of individual persons in communities larger than the nation-state and a human right to security of person. It maintains that relations between nation-states are purely political, as they exclusively concern interests and power, not what is morally right or ethically good *as such.* Realism has a long tradition in Western political theory, beginning with the ancient Athenian historian and political theorist Thucydides, followed by such theorists as Machiavelli, Hobbes, von Clausewitz, Hegel, Morgenthau, Kennan, Kissinger, among many others (Cady 1989; Doyle 1997; Smith 1986).

Realism asserts an international moral skepticism: the belief that morality and legality have either dubious or no relevance to the action of states. This moral and legal skepticism is based upon a particular way of understanding the international arena that includes two core assumptions: (1) the international arena is an anarchy; a condition wherein there exists no higher legal or moral authority than individual states - a Hobbesian state of nature (Hinsley 1986); and (2) states act out of exclusive self-interest. Thus, the core assumptions underlying the moral skepticism of Realism are anarchy and the imperative of self-interest. From the perspective of Realism, morality and law are confined within the boundaries of the nation; given that there does not exist a world government to enforce a legal and moral order, there can be no morality and law beyond the boundaries of the nation-state (Brown 1992).

Moral skepticism in the Realist tradition is based upon both the apparent absence of international political sovereignty, and an international Leviathan, which together render the international system an anarchy. Following Hobbes, adherence to moral principle, law, and even mutual promises (contracts, agreements, covenants, treaties) are contingent upon the existence of an overarching coercive authority (Hobbes 2008). This

authority requires a sovereign power that is capable of enforcing obligation. In the absence of an international sovereign, this view holds that it is rational, if one is in a position of superior power, to use any means necessary, including military force, to pursue one's own interests.

For the Realist, therefore, the international arena is an anarchy, a Hobbesian state of nature; a state of relations without the existence of a sovereign power to enforce morality and law (Hinsley 1986). Under the conditions of anarchy, power (and fear) take precedence. In fact, the international anarchical system is in a continual state of war, in the sense that war is always imminent. Under the conditions of anarchy, self-defense is rational and prudent; nation-states, not knowing other's intentions with a requisite degree of confidence, often respond out of self-defense with an increase in their capacity to project military force. The result is escalation, leading to an increased probability of the outbreak of conflict. This phenomenon is referred to as the "security dilemma:" to defend oneself is to increase the probability of conflict; defense, pursued in order to be secure, leads to insecurity (Jervis 1991).

Thus, given these anarchical dynamics, a state of war is generated, leading to a perpetual state of insecurity. Under these conditions the only way to maintain negative peace or a state of cold war (a state of relations free from actual fighting in the context of a state of perpetual insecurity) is through a balance of military power. If power is balanced between states, where no one state or group of states is dominant, then a state of cold war or negative peace can be maintained. Without the actual outbreak of hostility, the balance of power deters aggression by posing a significant retaliatory threat (Doyle 1997; Keohane and Nye 1977; Smith 1986). From the perspective of Realism, morality is grounded in and confined within the boundaries of the nation-state and, given that there does not exist an international community per se, there can be no morality and law beyond the boundaries of the nation-state (Brown 1992).

However, Realism does posit the existence of a moral community existing within the boundaries of the nation-state. There exists a national interest, which state agents are obligated to protect. Fundamentally, there exists a moral imperative to provide security for the people of the nation. Security is first and foremost the basic obligation of the State. The State, whose sovereign power is derived from the people, is therefore obligated, since all rights entail obligations, to provide security for individuals under its jurisdiction. Security is so fundamental that one could argue that it is the core organizing principle of the State. The State's claim to a monopoly control of the means of violence is based upon this security obligation. The

monopoly control of the means of violence in turn rests on its claims of sovereignty and self-determination.

Sovereignty is understood to be the final and absolute authority of the government wherein *no higher authority exists* (Hinsley 1986). In the current nation-state system sovereignty resides in the nation-state, and thus, as discussed above, the international system is an anarchy. In turn sovereignty renders the individual person a subject of the nation-state. In modern political theory and practice individuals are conceived exclusively as citizens of nation-states; their rights and obligations, and conversely the State's legitimate authority over, and obligation to, citizens, find their source in national sovereignty.

If nations are sovereign, then they have a *prima facie* obligation to protect the security of their own citizens. This is a powerful and seemingly irrefutable claim: the State is obligated to provide security to the people under its jurisdiction. From a Realist perspective, given this basic obligation, the national interest and the security of the people are to be pursued through the prudent exercise of power, including the deployment of lethal force. If state agents are charged with the protection of their citizens, then the pursuit of security through the exercise of power becomes morally justified, for the nation is pursuing what is right: the security of its citizens and the preservation and advancement of the national interest (Brown 1992).

In asserting sovereignty, the nation-state claims a right to self-determination. If no higher political authority exists above the nation-state, then no entity other than the nation-state has prima facie right to determine its affairs. This right is interrelated with its duty to protect the interests of its citizens. In general, the Realist, as discussed above, asserts the existence of the State's duty to provide security to *its* citizens. The Realist makes a valid claim here, that it is unrealistic to suggest that a nation-state will not pursue its national interest. The question is whether the nation-state also has a duty to non-nationals. In other words, in providing security to its own people, does it have any moral obligation to "non-nationals", to those outside the boundaries of the national moral community? Is the pursuit of one's national interest a legitimate justification for inflicting harm, and even death, onto the citizens of other societies? Can partiality to the good of one's community, and the citizens that comprise it, be so exclusive to the point of a complete denial of concern for the well-being of non-nationals? Does one owe, in a positive sense, the citizens of other societies moral consideration?

A Realist responds to these questions in terms of prudence. From the perspective of the harm done to one's own community by such disregard for others, it is likely that an unconstrained use of power will lead to a

proliferation of enemies, which in the long term will most likely undermine national security. Restraint is thus called for by prudence.

In addition, exclusive partiality leads to the Thucydidean dilemma: The pursuit of power in the international arena often requires behavior that viewed from the perspective of the domestic political morality is unacceptable, even heinous. The Athenian attack on and devastation of Melos is the classic case. Thucydides maintains that Athenian realist imperialism was the cause of the collapse of Athenian democracy (Mapel 1996; Nardin and Mapel 1992; McMahan 1996). In other words, disregard for citizens of other societies may in the long run undermine the national moral community, thus impairing its security. However, the Realist denies a moral obligation to non-nationals.

This denial is evident in its understanding of war as unlimited. From a Realist perspective, when force is engaged to protect national security, it is, by its very nature, unlimited. The actual deployment of lethal force is total; it leads to all out warfare wherein no one, even noncombatants, possess immunity. There are no moral principles to constrain force, only the threat of future retaliation. From this perspective, force creates a sphere of its own which is distinct from the sphere of morality. As von Clausewitz put it: "War is an act of force which theoretically can have no limits" (cited in Walzer 1997, 23). War is driven by the dynamics of the security dilemma. It is a dynamic of escalation that has no limit (Walzer 1997; Cady 1989). This understanding of war as total has been the dominant view in the history of warfare, and it has led to an understanding of war that is defined by terror (Carr 2002).

Realism denies the existence of a moral duty to non-nationals in its assertion of a duty to its own citizens. It can be argued, however, that in making this assertion Realism is inconsistent with the moral point of view of fairness; Realism morally justifies the pursuit of national security, yet it simultaneously practices moral exclusion in relation to those outside the boundaries of the nation. This moral exclusionary dualism constitutes a violation of reciprocity, impartiality, and equal recognition. Realism's attempt to refute the existence of morality between States and Peoples may ultimately fail in terms of its own presuppositions. It can be argued that it invokes morality to justify its pursuit of national security while contradicting fairness, the very principle that defines morality. This moral hypocrisy is especially acute for democracies that conduct their foreign affairs from the world view of Realism.

Our basic intuition about the nature of morality suggests that a moral act is one where we act or refrain from acting even when there is no threat of external enforcement due to a recognition of moral reciprocity (Beitz 1979;

Kant 1964 [1785]). All rights claims entail obligations (Shue 1980). As discussed in Chapter 1, the claim to a right requires that one meet the obligations implicit in it. In other words, it is the right itself that invokes the obligation, making the legitimacy of a claim for a right contingent upon the willingness to fulfill the obligation. The rights claim itself mandates the reciprocal obligation. In other words, rights involve moral reciprocity that renders them independent of external enforcement. If one claims a right, then one is obligated to respect the rights of others, independently of external authority. If one does not adhere to the obligations implicit in one's own claim, then one is guilty of violating reciprocity. Realism is grounded in what we identified in Chapter 2 as a principle or maxim of indifference: "I am not to do anything in order to help others when they are in need, or to assist them in distress, unless at the time it is rational for me to do so, in view of my own interests" (Rawls 2000b, 172). It can be argued that this principle is inconsistent with impartiality and thus may be unjustifiable.

2. International Society

It can be argued that if each nation possesses a right to self-determination, then all nations are obligated to refrain from intervening in the affairs of other nations. One's right to self-determination entails a moral duty of nonintervention in the affairs of others. To be consistent with its own claim of a national right to self-determination, there must exist a fundamental duty of non-intervention. Therefore, one might reasonably conclude that the claim of sovereignty, and in turn the right to self-determination, entails an international obligation of non-intervention, the duty to refrain from coercively interfering in the affairs of other nations.

This argument rests on the premise that moral obligation is implicit in rights claims, either societal or individual. This insight in turn suggests that morality is independent of external enforcement, and thus it is valid without the existence of a formal world government. If this conclusion is valid, then an international ethic of justice can exist. To be consistent with its own claims--that is, a right to self-determination --there must exist a fundamental moral reciprocity in the international arena, and this reciprocity mandates the moral duty of non-intervention. It can be argued that it would be *unfair* and thus morally unjustifiable to claim a moral right to self-determination without adhering to the obligation of nonintervention. Realism's attempt to refute the existence of morality between States and peoples while maintaining a national right to sovereignty may ultimately fail in terms of its own premises; it maybe a contradictory doctrine.

Both the right to sovereignty and the international duty of non-intervention comprises the core principles of an international society of nation-states (Bull 1977; Nardin and Mapel 1992; Nardin 1983; Mapel and Nardin 1998). Given that within this international society there is inherent equality between nation-states guided by the recognition of a state's right to self-determination and the universal obligation of nonintervention, justice manifests through a mutual respect for the equal sovereignty of each society. Injustice is therefore defined as the crime of aggression, the violation of nonintervention (Bull 1977; Nardin 1983). Both the right to national sovereignty and the correlative duty of non-intervention are the core principles of the international nation-state system, an international society (Hoffman 1981).

One interpretation of the principle of non-intervention suggests that it is the state corollary of the basic principles of classical liberalism articulated, for example, by John Stuart Mill in *On Liberty* (Mill 2003). For Mill, liberty is defined as the right to define and pursue one's own conception of the good life consistent with the equal right of others to define and pursue their own good. Mill argues that this right entails a *prima facie* obligation to refrain from coercively interfering in the affairs of others who also possess a right to liberty. Noah Feldman has articulated a formulation of this principle as a core element of an international ethic (Feldman 2004). Feldman writes: ". . . at a minimum, the government may permissibly set its goals on the basis of its own citizens' interests [in keeping with sovereignty, the right to self-determination, and its basic obligation to protect its citizens] *whenever those goals do not fundamentally conflict with the interests of people whom the government does not represent"* (original emphasis, p. 24). This formulation constitutes an international duty of no-harm to others.

In order to implement this right of self-determination and the correlative duty of nonintervention, an international order has been established consisting of a system of international institutions and regimes (laws, treaties, conventions) (Hoffman 1981; Mapel and Nardin 1998; Jones 1989). Within this system of world order, formal institutions have been created by nation-states for addressing political, economic, and legal issues, for example, the United Nations (U.N.), NATO, the World Trade Organization (WTO), the International Monetary Fund (IMF), the World Bank, among many others. This system of institutions is grounded in a series of international legal regimes, for example: the UN Charter; the Paris Climate Agreement; the Biological Weapons Convention; the Geneva Convention; and the Vienna Convention on the Law of Treaties, the Rome Statute of the International Criminal Court, among many others. The two main legal regimes concerning national security are the United Nations

Charter and the Rome Statute of the International Criminal Court. The United Nations Charter (UN 1946) stipulates the following:

> ***Article 1***
> The Purposes of the United Nations are:
> 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
>
> ***Article 2***
> The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.
> 1. The Organization is based on the principle of the sovereign equality of all its Members.
> 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
> 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

The Rome Statute of the International Criminal Court defines the crime of aggression in terms of the right to national sovereignty and the duty of non-intervention (ICC 2011):

> **Article 8 *bis***
> **Crime of aggression**
> 1. For the purpose of this Statute, "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.
> 2. For the purpose of paragraph 1, "act of aggression" means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof.
(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
(c) The blockade of the ports or coasts of a State by the armed forces of another State;
(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

This political and legal system of world order is state-centric, grounded in national sovereignty and nonintervention wherein only States have standing (rights and duties), not individuals. Peace is conceived within this system primarily as the absence of interstate warfare and a degree of international cooperation in economic, cultural, political spheres. From the perspective of the international society of nation states, security is not only achieved through a balance of military power but more fundamentally through adherence to the principles of justice of international society, namely respect for sovereignty and the duty of non-intervention (Bull 1977; Nardin 1983). The conception of security here is also national. Within the framework of an international society, national security is a universal right and duty *of states*, not persons.

2.1 Democratic Peace and the Possibility of a Democratic International Society

The logic of fairness, including the logic of equality inherent in democracy, finds its moral grounding in a basic commitment to equal respect for persons (Gutmann 1999). Respect for persons transcends cultural

and political boundaries. The idea of human rights, for example, extends the scope of the democratic logic of equality beyond the nation-state. In turn, there is evidence that the cosmopolitan extension of democracy's logic of equality leads to peace. In his prophetic essay "Perpetual Peace" (1795) Immanuel Kant argues that liberal republics will not go to war with each other, and thus the spread of liberal republicanism/liberal democracy will create, in the long run, the conditions for a perpetual peace between liberal nations (Kant 1983 [1795]). This peace is based upon both the structural nature of decision-making in liberal republics (e.g., divided branches of government and government by consent) and the cultural sharing of liberal morality (moral equality, commitment to nonviolent conflict resolution, the rule of law, etc.). In relations with other states, decision makers will try to follow the same norms of conflict resolution that have developed within and characterize their domestic political processes. They will expect decision makers in other states to follow these same norms of conflict resolution.

As discussed above, democracies are based upon respect for civil and political rights, including political self-determination, which entail norms against violent conflict resolution and for nonviolent conflict resolution. Self-governing people who share these norms will affirm an obligation toward other self-governing people to uphold norms of nonviolent conflict resolution. Therefore, democracies will follow norms of nonviolent conflict resolution with other democracies, and will expect it to be reciprocal, mutual. Furthermore, in democracies, the constraints of checks and balances, division of power, and need for the public to enlist widespread support will slow decisions to use large-scale violence and reduce the likelihood that such decisions will be made. Leaders of other states will perceive leaders of democracies as so constrained. Thus, leaders of democracies will expect that in conflicts with other democracies, the processes of international conflict resolution will operate.

In recent years this proposition has received considerable attention and a significant amount of empirical evidence seems to confirm Kant's insight (M.E. Brown, Lynn-Jones, and Miller 1996; Doyle 1997; J.L. Ray 1995; Russett 1993). It seems that liberal democracies have never fought each other, although they are as war prone toward non-liberal states as any other non-liberal state. What Kant's peace proposition suggests is that a shared political morality based upon respect for the inherent dignity of humanity creates the conditions of peace. Respect morally prohibits violence; it demands peace and justice, for any aggressive or exploitive act violates one's dignity by turning the victim into an object and thereby dehumanizing them. Thus, the spread of democracy potentially would lead to a more just and peaceful world (Kant 1983 [1795], 1964 [1785]; Lutz-Bachmann 1997).

The democratic peace proposition suggests that an international society of democratic states is not only desirable but possible. When democratic norms are shared and recognized between democratic states and peoples, then they can agree to a set of international norms that regulate their relations with each other. These international norms are based on mutual agreement, absent an overarching enforcement authority, and based upon a shared conception of rights consistent with their democratic identity.

It has been argued, based upon the idea of moral and cultural relativism, that such an international society would be confined to democratic nations. For example, Samuel Huntington (Huntington 1996) maintains that we have entered into a new phase of world history wherein a clash between civilizations is the primary form of conflict. In the modern era war has moved from conflict between nations, to conflict between ideologies, to conflict between civilizations. From this perspective, the logic of equality is not universal *per se* but is inherently Western, and from the perspective of nonwestern states, its advocacy is hegemonic. The clash of civilizations hypothesis, based upon the presupposition of cultural relativism, suggests that a cross-cultural ethic is not possible. Philosophically moral relativism is, however, logically inconsistent, in that it makes absolute claims about the relative nature of morality. More specifically, it claims that morality is ultimately grounded in cultural communities whose beliefs and practices are relative; thus, in principle a transcultural ethic is impossible. However, cultural relativists maintain that each culture should be respected, that each culture should be free from the coercive interference of others, free to adjudicate life on its own terms. If morality is relative, then on what grounds does one culture refrain from interfering in the life of another? According to relativism there are no grounds to adjudicate moral differences between cultures and thus we are faced with the fact that conflict will be resolved through power. If there is no conceivable cross-cultural ethical standard, then we must face a state of international anarchy and perpetual civilizational war, and as these wars indicate, anything goes, including the deliberate mass murder of innocent people. At the core of cultural relativism, however, is the claim of self-determination: the community claims a right to proceed internally according to its own conceptions of the good life. However, this rights claim presupposes an obligation of nonintervention in the affairs of other states.

As discussed above, again, if one claims a right, then inherent in that claim is an obligation consistent with the right. All rights claims entail obligations; the claim to the right, in this case self-determination, requires that one meet the obligations implicit in it, for if one does not, then one forfeits the right. In other words, it is the right itself that invokes the

obligation, making the right contingent upon the fulfillment of the obligation (Shue 1980). The rights claim itself mandates the reciprocal obligation. In other words, rights involve moral reciprocity. If one claims a right, then one is obligated to respect the rights of others. If each community possesses a right to self-determination, all communities are obligated to refrain from intervening in the affairs of other communities. One's right to self-determination entails a moral responsibility of nonintervention in the affairs of others. Thus, if a society has a right to self-determination (or if individuals possess inalienable rights), then entailed in those rights are inherent responsibilities, such that if the right is invoked, then a reciprocal responsibility exists independently of any enforcement agency.

Implicit in this argument are two fundamental elements of fairness: (1) reciprocity and (2) equality. Implicit in the claim of a right of self-determination is the presupposition that all human communities are morally equal. They all possess an equal right to self-determination and have an equal obligation to adhere to nonintervention; the right and obligation are reciprocal and thereby universal. Moral equality is in turn based in a shared commonality: the shared commonality is their humanity. All human communities are entitled to self-determination and constrained by the obligation of nonintervention because they are *human*. Nonintervention is the norm unless there are gross human rights violations (Hoffman 1996).

One could also argue that the human commonality exists as well on the individual level. We may owe the alien other moral concern because he or she is a fellow human being who possesses certain inalienable rights inherent in that humanity. We may share a common humanity, transcending cultures, and polities, with others. If the individual possesses rights inherent in their humanity, then all individuals in turn have a reciprocal obligation to respect the rights of others, even those who are alien communally, based on a shared humanity.

If there exists moral reciprocity and a shared human equality, then an ethic that transcends individual moral communities is possible. In fact, a global ethic in nascent form is implicit in the claims of cultural relativism. For any society, national or international, to exist there must be a shared common set of ethical values and moral principles of justice. Without such a set there is anarchy, a war of all against all. Certainly, there are fundamental principled ethical and moral differences between civilizations. However, implicit in the claims of civilizational relativism is the right of self-determination and for self-determination to be real all parties must acknowledge a transcultural, transnational ethic of nonintervention that preserves that right. A democratic imperative is thus inherent in the normative logic of the universal right to self-determination. What this

argument calls for is a dialogue between civilizations based upon our fundamental humanity to discover and forge, in thoughtful and sensitive ways, mutually shared values consistent with the imperatives of self-determination. This is the basis of an international society (Snauwaert 2001).

3. Global Society and the Human Right to Security of Person

It can be argued that nation-states do not possess rights in themselves but only as bearers and representatives of the rights of the individuals that comprise them. The State is not an entity that has its own essence *per se*. From this perspective, state rights are a manifestation of individual rights. States derive their sovereignty, their rights and duties, from the consent of the people (Hinsley 1986; Hoffman 1996; Kant 1983 [1795]; Sharp 1973). The principle of nonintervention thus rests on the individual right of security of person and self-determination, which in turn is based upon the recognition of the equal inherent dignity of each person. From this perspective, the source of sovereignty is individual rights (Held 1995; Hoffman 1981; Kant 1983 [1795]; Nussbaum 1997; Walzer 1996, 1997).

From a democratic perspective, sovereignty is based in the consent of the people; the state derives its authority to govern from the people, on behalf of the people. Democratic sovereignty follows from the logic of equality. It is based on the rights of individuals. Democracy is a system of rights premised upon the *logic of equality* (Dahl 2000). At its core is a fundamental belief in moral equality, a belief that *all* human beings possess an equal inherent dignity or worth. Its logic runs as follows: if we are morally equal, then we also possess rights, and inviolable claims to the actual enjoyment of particular social goods guaranteed by the society (Shue 1980; Dahl 2000). The two basic rights of a democracy are: the freedom to conceive and pursue one's own conception of the good life (consistent with the equal rights of others) and political self-determination—negative and positive liberty respectively. The right to self-determination entails the basic notion of government by consent, which involves the right to political and legal equality (including the right to representation) and concomitant rights such as rights to freedom of expression, association, due process, etc. As moral equals, all citizens of a liberal democracy have an inviolable claim to have their interests represented in the political process.

The principle of nonintervention thus rests on the individual rights of security of person, and self-determination, which in turn is based upon the recognition of the equal inherent dignity of each person. The source of

sovereignty is therefore a cosmopolitan (global, transnational) moral principle (Held 1995; Hoffman 1981; Kant 1983 [1795]; Nussbaum 1997; Walzer 1996, 1997). This cosmopolitan imperative is implicit in the logic of equality inherent in democracy, for both cosmopolitanism and democracy find their moral grounding in a basic commitment to equal respect of individual persons, a respect that transcends cultural and political boundaries (Gutmann 1999). There is a profound interconnection between human rights, democracy and peace (Bobbio [1990] 1996; Ignatieff 2001). The source of sovereignty and thus the parameters of nonintervention are grounded in human rights.

From this perspective, security can only be achieved through the establishment of a shared moral, legal, and political global order that guarantees the rights of all human beings. Article 28 of the United Nations Universal Declaration of Human Rights (UN 1948) stipulates that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." This global order transcends but includes the principles of international society by including the sovereign rights of every human being. From this perspective, authentic security is *human security*. The idea of human security pertains to the "wellbeing made possible through the elimination of all forms of violence, assured by institutions designed specifically to achieve and maintain wellbeing …" (Reardon 2010, 33). It offers an alternative conception of security to the conception of state security, one that is consistent with the ethical and moral imperatives of human rights. From this perspective, the aim of security is to "protect life and to enhance its quality." Questions of security would be transformed into: "What are the fundamental threats to human life? And how can we overcome these threats in a life enhancing manner?" (Betty A. Reardon 2010b, 139–140). Thus, security should concern human well-being.

The concept of human security first emerged in the United Nations Development Programme's 1994 *Human Development Report* (UNDP 1994). The UNDP's conception of human security maintains that security should be expanded to include protection to standard threats in the following areas:

- **Economic security** – assuring a *basic income* for all.
- **Food security** – requires that all people have access to basic food.
- **Health security** – minimum protection from diseases and unhealthy *lifestyles*.

- **Environmental security** – aims to protect people from the short- and long-term ravages of nature, man-made threats in nature, and deterioration of the *natural environment*.
- **Personal security** – *Personal security* aims to protect people from physical *violence*.
- **Community security** – aims to protect people from the loss of traditional *relationships* and values and from sectarian and ethnic violence.
- **Political security** – providing a society that honors basic human rights.

From this perspective, human security is protection from all forms of violence, direct, structural and cultural; positively it suggests an interdependent, comprehensive framework that includes the provision of a life-sustaining environment, integration of social, economic, and natural systems to produce sustainable societies, fair distribution of basic economic and social goods to meet the basic needs for wellbeing, respect for individual and group dignity and identity, protection and realization of human rights and protection from avoidable harm. In seeking these goods, human security gives specific attention to the most vulnerable beings (Reardon 2010b; Snauwaert 2019).

4. Summary

The question of *whose security?* is at the center of discussions about the nature of peace and justice. Any society and its members are incapable of enjoying peace and justice under the threat of direct violence. We are faced with a choice of which conception of security is the most morally justifiable as a matter of justice: national security grounded in the imperatives of Realism, national security grounded in an international society governed by state-centric international law, or security of person grounded in a global society governed by a regime of human rights? It can be argued that aggression is justifiable by the self-interest and power of nation-states (Realism), or it can be argued that aggression is a basic violation of either national security, or a human right to the security of persons—human security. The peace constitution pedagogical exercise outlined below is a framework for engaging in inquiry into the basic question Whose Security and these possible answers.

5. Peace Constitution Basic Template: Whose Security?

1) Summarize the basic question of justice being considered in the section—Whose Security? Who should be protected from aggression?
2) Alternative Principles: Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic question and choose a set of principles of justice. Which alternative conception of security is the most justifiable from the perspective of fairness?
   i. Realism: national security (meaning the security of the government) achieved through either a balance of power between nations or the existence of a dominant nation.
   ii. International Society: National security achieve through an international moral and legal order based in the equal sovereignty of nations and the duty of nonintervention.
   iii. Global Society: Human security: universal human right to security of person (as well as other human rights)—security of individual persons through the enforcement of a global order of human rights.
3) Justification: Articulate a justification of your choice of principles by employing the elements of fairness. From the moral point of view of fairness, are the principles justifiable? Consider also why alternative principles are unjustifiable. Why is your choice of principle (Realism, International Society, or Global Society) justifiable in terms of the elements of fairness?
   i. Equality: Does it recognize and treat all persons as equals?
   ii. Recognition: Is it consistent with respect for persons?
   iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
   iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4) Conclusion: Conclude with a summary and statement of the principles--Summarize your choice and its justification.

CHAPTER FIVE

WHO BELONGS?

The question *Who Belongs?* is a basic question of membership and standing every society addresses as a matter of justice. As a matter of freedom and autonomy grounded in their basic right to determine the course of their society, as well as their right to freedom of association, citizens of a political community have a right to determine who joins them as members (Walzer 1983). As matter of fairness, a political community is not fully self-determining unless it has discretion over who becomes a member (Mettler and Lieberman 2020; Wellman 2020).

Two central aspects of the question who belongs will be explored in this chapter: On what basis should membership be determined? Should citizens have equal standing as members in society, or should membership be distributed unequally in terms of a social and political hierarchy? Regarding membership, two basic justifications for who should qualify as a member will be explored: ethno-nationalism vs. a shared ethical identity standard of membership. Regarding standing, two basic perspectives on the nature of social and political standing will be explored: a hierarchical approach based upon differentiated categories of persons vs. an egalitarian approach wherein all citizens have equal standing. From a rights perspective, membership constitutes the "right to have rights," in the sense that it is membership that gives one the standing in the society to make justified claims; equal standing as a member is therefore the "equal right to have equal rights." Membership and equal standing therefore are of singular importance.

Furthermore, membership in a community is a basic aspect of our humanity; belonging to social groups is fundamental to being human. Human beings evolved in social groups, which were essential for survival and development of the species. Life was contingent upon social belonging (Klein 2020). Therefore, the question of belonging is fundamental, and being so, it is a matter of justice. A just society should determine membership and standing in terms of principles of justice and political values. From the perspective taken in this book, those principles and values should be *fair*, that is, they should be consistent with, and be centered in, equality, recognition, impartiality, and reciprocity.

This chapter puts forward a process of moral reasoning and a pedagogical framework that addresses these important questions of membership and standing and the justification of principles and values for adjudicating and determining the answers to this pivotal and urgent societal question – who belongs?

1. Membership and Social Group Belonging

There is a strong human tendency to base membership in social group identity; human beings have a basic tendency to categorize and order the social world in terms of an *us vs. them* dichotomy, which often presents as in-group bias and out-group hostility (Coleman 2021; Mason 2018; Klein 2020; Sherif et al. 1988; Tajfel 1970; Tajfel et al. 1971). Human beings evolved in social groups; social group belonging was essential for survival as well as for the development of the species (Klein 2020). We are evolutionarily hardwired to seek belonging in social groups. This tendency has important consequences for how membership and standing are determined. Given our need for belonging we have a strong tendency to construct the social order in terms of group membership and identity. As the noted social psychologist Henri Tajfel suggests:

> The individual constructs his own "web of social affiliations" by applying principles of order and simplification …. Perhaps the most important principle of the subjective social order we construct for ourselves is the classification of groups as "we" and "they"—as in-groups … and out-groups (Tajfel 1970, 98).

Perceptions of, and behavior toward others are structured by in-group and out-group categorizations (Henri Tajfel et al. 1971). Group categorization is the way we create the social boundaries which shape our self-identity. Self-identity is based in group identity; our self-image is constructed in dialogue with the culture of our social in-group (Klein 2020; Taylor 1992). We have a basic need for both inclusion in our in-group and differentiation from out-groups (Brewer 1991). It gives order and coherence to the social world.

This tendency is grounded in two primal aspects of human psychology and evolution first identified by the ancient Greeks: *Thymos*—a demand for recognition and respect, which takes two forms—*Megalothymia*, a desire to be recognized as superior and *Isothymia*, a desire to be recognized as an equal (Fukuyama 1992, 2018). Both group inclusion and differentiation are driven by *thymos,* the fundamental desire to be recognized. When driven by *megalothymia,* the desire to be different from and superior to others,

differentiation results in in-group bias (favoritism) and out-group hostility (Tajfel 1970; Tajfel et al. 1971). It is a tendency toward tribalism.

The tendency and dynamics of tribalism are illustrated by two classic research studies in the field of social psychology by Muzafer Sherif and colleagues, and Henri Tajfel and colleagues. Sherif and colleagues hypothesized that competition between groups would trigger in-group bias and out-group hostility, or tribalism. To test this hypothesis, they set up an experiment, the Robbers cave experiment, with teenage boys of the same age, race, ethnicity, social class, gender, and religion. They took them on a camping trip and arbitrarily divided them into two groups: the Rattlers and Eagles. Their hypothesis was confirmed. From the start the competition between the two groups exhibited tribalism. The bias and hostility became so fierce that they had to call off the experiment. What is striking here is that it was the competition based in a superficial and arbitrary identity, Rattlers vs. Eagles, with deeper aspects of identity being identical and thus controlled for, that triggered tribalism (Sherif et al. 1988; Mason 2018; Klein 2020).

Henri Tajfel and colleagues followed Sherif's work and sought to test whether tribalism could be triggered by only the division of groups without any competition between them—whether just the division into groups *alone* would give rise to in-group bias and out-group hostility. Like Sherif, et al. they brought a group of homogeneous teenage boys into a laboratory and arbitrarily divided them into groups based upon the task of identifying dots on a screen. This task was deliberatively meaningless. Here we have the lightest possible group identity based upon meaningless criteria among a homogeneous group below the threshold of any possible collective identity taking hold. Once separated into groups they introduced a second experiment wherein the boys were to hypothetically give away money to their group and the other group. The findings revealed a basic tendency toward in-group bias: a majority of the subjects in all groups gave more money to members of their own group than to those outside their in-group. The conclusion: the mere division into arbitrary and meaningless groups triggered tribalism: in-group bias. Given the importance of social group inclusion and differentiation to human survival and evolution (Brewer 1991), no one is immune; we are all prone to tribal bias (Klein 2020; Tajfel 1970; Tajfel et al. 1971; Mason 2018).

Furthermore, we do not have direct epistemic access to the social world; the mind is not a camera capturing a direct and immediate image of the world—our experience of the world is always conditioned and shaped by the mind. Neither sensory perceptions nor rational intuitions are ever directly received in the mind but always processed, translated into ideas

which are inevitably known in the context of other, preexisting ideas, cognitive structures, categories, schemata, etc. Our preexisting belief systems and the ways in which we construct our identity influence how we make sense of the social world. Given our need for belonging, we construct social order in terms of group membership and identity. Various beliefs and values further define our self-identity and have a profound influence on our view of the social world.

Moreover, perceptions and understandings of others are shaped by inferences regarding the attributes of groups, and the individuals that comprise them, structured by in-group and out-group categorizations (Tajfel et al. 1971). Group categorization is the way we to tend to create the social boundaries which shape our self-identity, orienting us to the world (Klein 2020; Taylor 1992). We have a basic need for both inclusion in our in-group and differentiation from out-groups (Brewer 1991). In-group bias is deeply rooted, and it shapes our relationships with others.

2. Ethno-Nationalism as the Standard of Membership

The need to be included in a group that is differentiated from others gives rise psychologically and historically to an approach and justification for exclusive membership: this standard is termed ethno-nationalism, which maintains that to belong one needs to be a part of the racial, ethnic and/or cultural in-group. Ethno-nationalism is grounded in the importance of a shared ancestry, religion, and language as well as common descent. Historically it manifests in the ethnic, racial, and religious form of an anti-immigrant sentiment. Ethno-nationalism maintains that the exclusion of cultural outsiders is necessary in order to preserve the culture of the society (Wellman 2020). Many countries, recognize ‘ius sanguinis’, the rule that citizenship is determined or acquired by the nationality of a person’s mother or father or other descendants. For example, a significant percentage of citizens of the United States maintain that the country was founded as a Christian (Protestant) nation and that only persons of Christian (Protestant) heritage should count as citizens. A recent survey of 6,212 Americans by the Public Religion Research Institute and the Brookings Institution found that 10% of Americans are avowed Christian nationalists, while an additional 19% are sympathetic to Christian nationalist ideals (PRRI and Brookings 2023). Among white evangelicals, nearly two-thirds are Christian nationalists or sympathizers. 38% of Black Protestants surveyed held a Christian nationalists view. Respondents were asked whether they completely agree, mostly agree, mostly disagree, or completely disagree with each of the following statements:

- The U.S. government should declare America a Christian nation (27% mostly or completely agreed).
- U.S. laws should be based on Christian values (40% mostly or completely agreed).
- If the U.S. moves away from our Christian foundations, we will not have a country anymore (38% mostly or completely agreed).
- Being Christian is an important part of being truly American (30% mostly or completely agreed).
- God has called Christians to exercise dominion over all areas of American society (20% mostly or completely agreed) (PRRI and Brookings 2023).

A further indicative example of an ethno-nationalist perspective is former President Donald Trump's statement criticizing the progressive political opposition posited by an ethnically, culturally, and racially diverse group of U.S. Congress women—Rep. Alexandria Ocasio-Cortez (D-NY); Rep. Ayanna Pressley (D-MA); Rep. Ilhan Omar (D-MN); and Rep. Rashida Tlaib (D-MI) (not only U.S. citizens but elected officials of the U.S. government)—he stated: "Why don't they go back and help fix the totally broken and crime infested places from which they came" (cited in Rogers and Fandos 2019).

Reflecting the prevalence of ethno-nationalism in the history of the United States, immigration policy is replete with race and ethnicity as standards of membership. The Chinese Exclusion Act of 1882 suspended the immigration of Chinese laborers, barred Chinese immigrants from attaining naturalized citizenship, and provided provisions for the deportation of undocumented Chinese immigrants. The 1888 Scott Act banned the return of Chinese nationals with lawful status in the United States if they departed the country (Hipsman and Meissner 2013; Anderson 2007). The 1917 Immigration Act prohibited immigration from an "Asiatic barred zone" which included the Indian sub-continent, Southeast Asia, and the Middle East. The Immigration and Naturalization Act of 1924 established a national-origins quota system. It strongly favored immigrants from northern and western Europe. The 1952 Immigration and Nationality Act continued the national-origins quota system but for the first time allocated an immigration quota for Asian countries (Hipsman and Meissner 2013). The Trump administration executive order to ban entry of persons from Muslim nations is a recent example.

Ethno-nationalistic arguments for basing membership on race and ethnicity have reemerged on the right of the political spectrum in Europe as well (Alonso and da Fonseca 2011). Of course, ethno-nationalism has been a prominent feature of the history of European nations. Perhaps the ultimate

example of European ethno-nationalism was Nazi Germany. The Nazi legal system sought to establish and enact a system of law founded upon race-based immigration, naturalization, and unequal citizenship law. While they were baffled by the strong liberal democratic elements of the United States, they also used U.S. racial discrimination law as a model (Whitman 2018).

Ethno-nationalistic standards for membership are also prevalent in other nations. For example, The Basic Law of Governance of Saudi Arabia establishes the country as an Islamic state. It stipulates that the country's constitution is the Islamic religious texts of the Quran and the Sunna; it requires that the decisions of judges be subject to only the authority of Islamic law. The Basic Law requires the conversion of non-Muslims to Islam to be eligible for naturalized citizenship. The law requires that applicants for citizenship attest to being Muslim certified by a Muslim religious authority (State 2022). A similar religious requirement for citizenship exists in Kuwait and Qatar. These examples illustrate the ethno-nationalist standard for citizenship.

3. A Shared Public Ethical Identity Standard of Membership

The principled approach to the determination of membership maintains that the characteristics of race, ethnicity, culture, religion as the basis of membership are morally arbitrary; they are ascriptive characteristics that should have no relevance for determining membership. It is argued that *contingent, morally arbitrary facts about persons should not determine one's position and role in society, socially, economically, legally, or politically, nor the rewards and benefits to which one may be entitled.* Contingent, morally arbitrary, ascriptive characteristics of persons should not matter regarding their membership and standing in society. It can be argued that neutrality toward ascriptive characteristics when considering who belongs is a requirement of impartiality grounded in equality and respect for persons. In general, a relationship between X and Y is neutral if there exists no causal relation between them. In other words, it is neutral if one does not affect the other. From the perspective of this principled approach, for ascriptive characteristics to have any bearing on membership or standing as a citizen or person is unfair. This is the ideal standard. Of course, there is a long history of the use of ascriptive characteristics, such as race and gender as socially constructed categories, to determine membership and standing.

The principled position maintains that race and ethnicity as bases of membership are inconsistent with the imperatives of fairness, for their use to determine membership violates the elements of equality, recognition,

reciprocity, and impartiality. Individuals, peoples, and nations have reason to reject determining membership and standing based on race, ethnicity, religion, and gender. It is argued that fairness requires that we transcend our identities based in ascriptive and thus arbitrary characteristics. Furthermore, in considering membership and standing we need to take into consideration the drive to differentiate ourselves and our social groups, including our nations, by seeking to be superior to others by dominating and suppressing them. Justice and peace are continually threatened by conflicts regarding claims of differentiation and superiority. If we affirm the value of equal membership, standing, and rights for all, then the struggle for recognition through the domination of *us vs. them* dynamics can be transcended by affirming fairness, mutual respect, equal recognition, and reciprocity.

Under the conditions of social pluralism, wherein societies and the world are characterized by diversity and multiple social identities, equal recognition is challenged by in-group bias and out-group hostility as well as the drive to be recognized as superior to others. *Isothymia,* the desire for recognition as an equal, however, remains a significant desire. The appeal to moral reasoning in terms of fairness as the means of justification of principles of justice, including principles to guide the establishment of standards for the determination of membership, suggests that we are capable of transcending in-group bias and out-group hostility, and thus the confinement of race and ethnicity, in favor of a principled approach to determining membership. This insight raises the question: on what normative basis should we decide membership? In what ways can an appeal to moral reasoning grounded in the elements of fairness, enable us to transcend tribalism without losing distinctiveness, such that equal recognition is operative in determining membership?

One answer is membership can be justifiably determined by whether a person understands, accepts, and affirms the shared political values and principles of the society. In the following statement Franklin D. Roosevelt points towards ethical values as a standard for membership, for example: "...Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race and ancestry. A good American is one who is loyal to this county and to our creed of liberty and democracy" (cited in Schlesinger 1992, 43). "'Citizenship' is a political, not a cultural concept" (Forst 2002, 107). We can affirm ethical values and thereby form an ethical identity that is common across the plurality of social group cultural differences. Shared ethical values can replace ethno-cultural consistency as the text of citizenship. The noted American historian Arthur Schlesinger (Schlesinger 1992) expresses the same sentiment:

> Yet what has held the American people together in the absence of a common ethnic origin has been precisely a common adherence to ideals of democracy and human rights . . . (p. 123) . . . The genius of America lies in its capacity to forge a single nation from peoples of remarkably diverse racial, religious, and ethnic origins. It has done so because democratic principles provide both the philosophical bond of union and practical experience in civic participation (p. 142) … Our task is to combine due appreciation of the splendid diversity of the nation with due emphasis on the great unifying Western ideas of individual freedom, political democracy, and human rights. These are the ideas that define the American nationality . . . (p.147).

Along these lines, as discussed earlier, the communitarian philosopher Michael Sandel articulates the idea of a "constitutive community"; constitutive in the sense that the collective ethical identity of the community forms the ethical identity of its members. Identity is not chosen; it is found within the ethical values of the community. In turn, the members' obligations are situated within the ethical identity of the community (Walzer 1983, 1987; Walzer and Miller 2007; Sandel 2009). Alasdair Macintyre also maintains that the identity of persons is dialogically formed within the context of the community, specifically in the social "roles" that define communal life and one's place in it, that in turn contain obligations which one can only reject at the loss of identity. From this perspective, a coherent conception of morality is based in a conception of ethical value (Macintyre 2007). To belong is to share in the ethical identity of the community. From the moral point of view of fairness, to be justified, however, that ethical identity must be consistent with the elements of fairness. If it is, then a shared ethical identity basis of membership would be justified.

As Lillianna Mason suggests, shared ethical values allow for the recognition of a common humanity among individuals with otherwise diverse ethnic, racial, and cultural identities, which in turn reduces the hostility and bias between social groups (Mason 2018). By affirming common values, a common civic identity can be the basis of membership and standing among citizens with a plurality of beliefs, values, and social identities (Rawls 1993). A functioning democracy is contingent upon citizens being inclined to freely compromise and sacrifice because they identify with one another by affirming common political values (Wellman 2020).

4. Principles of Immigration: On What Basis Should Outsiders be Granted Membership?

Reasoning about justifiable principles which may be used to determine membership status of immigrants pertains to foundational human rights. For example, there is a recognized basic human right to membership in a nation-state in Article 15 of the *United Nations Universal Declaration of Human Rights which* asserts:

1. Everyone has the right to a nationality.
2. None shall be arbitrarily deprived of his nationality or be denied the right to change his nationality (UN 1948).

From this perspective, the individuals standing in the global moral community bestows a human right to national citizenship/membership and standing. Furthermore, there is a human right to emigration, to leave one's country and join another. Emigration refers to the right to leave one's country, while immigration refers to both leaving one and joining another country. Article 15 Section 2 of the *Universal Declaration of Human Rights* stipulates: "None shall … be denied the right to change his nationality" (UN 1948). There is a human right to change one's country, to emigrate. This right is an affirmation of the right to liberty.

It can be argued in turn that human rights to freedom of choice and association suggest that every person should not only have a right to leave their country, but they should be able to freely immigrate to the country of their choice as well. From the perspective of the latter, anything less than open borders is an affront to liberty. Nations, however, have sovereignty and a right to self-determination, which includes the right to determine who is granted membership and standing, the right to choose and protect its own borders and to determine who is granted membership and standing. Therefore, the joining of another country, to immigrate, is generally seen not as a right, but as a grant bestowed by the host country. There is no current human right to be *automatically* granted membership in the nation of one's choosing. Citizens have a right to membership in a nation and the right to leave that nation, however, they do not have a right to unconditional membership in any nation of their choice. It is the current right of the host nation to determine entry. Current members have a right to determine the status of new members—the right to choose who can join them.

In this context, on what justifiable basis could immigration be determined? To what degree, and on what grounds of justification should the borders of nations be open or closed to new members? Central to these questions is the alternate justifications of ethno-nationalism and the shared

ethical identity standard/principled approach. Should immigration be regulated by the imperatives of ethno-nationalism or a shared ethical identity? Furthermore, it can be argued based upon fairness, that any restrictive immigration policy should pass the reasonable rejectability test of not only current citizens but potential new members as well. In other words, it can be argued that a just society should take into consideration the opinions of potential immigrants to see if they have morally justifiable reasons for rejecting proposed immigration policy restrictions (Wellman 2020). What would be fair? Furthermore, there are two additional reasons for the determination of justifiable immigration: economic benefit and political asylum.

4.1 Economic Benefit

An economic argument commonly used to justify restriction of immigration and closed borders is the view that immigrants will take away jobs from citizens as well as depleting the availability and quality of social welfare resources such as schools, health care, public assistance, etc. (Wellman 2020). The immigration standard here is that the immigrant be capable of making an economic contribution to the society. Here the capacity to contribute to the economic well-being of the society should be considered a common good in the interests of all citizens. Thus, a prominent reason for granting immigration is economic benefit - to welcome workers to the national economy, including both those with sophisticated knowledge and skill and laborers, including those who are willing to do work that the current citizenry is unwilling to do (e.g., farm workers).

It can be argued further that economic benefit as the justification of immigration should be constrained by two principles of justice. The first principle is to avoid the exploitation and oppression of workers. The second principle is that the choice of immigrant *should not* be based upon racial, ethnic, gender, nor sexual orientation. It can be argued that both exploitation and discrimination violate fairness, and thus fair and non-discriminatory immigration on economic grounds should be the standard.

4.2 Political Asylum

Another standard of determination of immigration is the granting of political asylum as a justifiable reason for entry (Andreopoulos 2018; Peters and Besley 2015). Complementary to the human right of citizenship and the contingency of national sovereignty, is the human right to seek political asylum. This right is stipulated in Article 14 of the *United Nations*

Universal Declaration of Human Rights: "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (UN 1948). This right is further elaborated by United Nations *Convention Relating to the Status of Refugees*, also known as the *1951 Refugee Convention* or the *Geneva Convention of 28 July 1951***.** It defines the meaning of who a refugee is, the rights of individuals who are granted asylum, and the obligations of national governments who grant asylum.

The rights created by the Convention are still generally operative today. The human right to political asylum is grounded in the equal standing of persons in the global community, an instantiation of universal reciprocal recognition of their moral equality. It simultaneously recognizes the right of nation-states and their citizens to grant asylum and to specify the terms of that protection consistent with fairness. Article 3—Non-discrimination—of the *Convention* stipulates that "The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin." Furthermore, Article 34—Naturalization—stipulates that "The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings." Entry of a person in one nation to be protected from the abuse of another national government can be granted by the former, and once given that protection the person can seek citizenship in that nation as a matter of right.

5. The Question of Standing

The question *who belongs?* not only concerns the granting of membership; it also concerns the standing of members in the society. Standing refers to the position of the member in the society and thereby the structure of that society. Should standing be equal or unequal? Should citizens have equal legal and political standing as well as fair equality of opportunity for social positions and offices? Again, two prominent approaches and justifications can be explored: a vision of the just society as hierarchical or as egalitarian.

5.1 Hierarchical Society

Regarding the question of *standing* from within the perspective of the drive to superiority, *megalothymia*, coupled with the basic evolutionary need for differentiation, has led to the prevalence of unequal hierarchical social systems and injustice (in terms of structural and cultural violence) in

human history. There has been a longstanding belief that human beings differ from each other categorically in capabilities and thus in social standing, and that these differences require a hierarchical system of social relations. For example, as the ancient philosopher Aristotle posits in stark and extreme terms: "It is evident then that there is a class of persons, some of whom are naturally free and the others naturally slaves, persons for whom the condition of slavery is alike expedient and just" (cited in Johnston 2011, 101).

This logic leads to a belief that the social order is fixed by nature and that considerations of justice are confined within the view of a fixed hierarchical system of social relations (Johnston 2011). This system entails a command-obedience relation between equal and unequal persons, such that persons considered unequal do not have an equal power to make independent decisions. It manifests as a Hegelian master-slave dynamic of unequal recognition (Fukuyama and Fasting 2021; Johnston 2011). Within a system of social relationships premised upon inequality, standing is determined by position in an unequal social hierarchy. Such unequal social membership hierarchies have historically been grounded in various categories of persons, most of which are *socially constructed*: race, ethnicity, or culture (nationalism), gender (patriarchy), sexual orientation, and social and/or economic class (aristocracy). These categories of persons are used as a means by which society allocates privilege, status, and most importantly power, thereby determining the distribution of benefits and burdens within the social hierarchy (Crenshaw et al. 1996; Delgado and Stefancic 2017; Ray 2022)

In many cases these categories intersect creating overlapping experiences of inequality. This phenomenon is referred to as "intersectionality"—a core tenet of *critical race theory* (Crenshaw et al. 1996; Delgado and Stefancic 2017; Ray 2022). The experience of intersectional inequality suggests that unequal social hierarchies are complex and multidimensional with layers and degrees of inequality structurally determined. Inequality is structured along multiple lines of identity and not a single identity-based axis (Delgado and Stefancic 2017). Furthermore, such social hierarchies are structured so that any change making the hierarchy more equal only occurs if it is in the interest of the dominant group in the hierarchy. This phenomenon is referred to as "interest convergence" (Bell 1980). In other words, "The majority group tolerates advances for racial justice [and other categories of inequality] only when it suits its interest to do so" (Delgado and Stefancic 2017, 77). It is the convergence of interests that is the driver of increased equality not a normative choice by those in a position of power.

Furthermore, driven by *megalothymia* the separation of groups into in-groups and out-groups seeking domination are not only at play in national societies; they also have a powerful influence on the relations between nations, and the possibilities of an international society or even transnational society with concomitant membership and standing. The influence of *megalothymia,* the desire to be recognized as superior drives domination, the pursuit to be the dominant power in the world, and to have others comply with one's dominance. This desire is the basis of imperialism/colonialism as well as being a basic cause of aggression. It is the master-slave struggle for recognition on the world stage (Fukuyama 1992, 2018; Williams 1997). As Francis Fanon observed, the colonized world is a world compartmentalized (segregated) and thus divided between two antagonistic forces, the dominator and the dominated. Colonialism is naked violence; it constitutes the imposition of, and external coercive power to, dominate (and exploit) an indigenous population. The internal border that marks the segregation of the colonized and the colonizer is the police/military who enforce the system of internal domination of the foreign power (Fanon 2004 [1961]). Furthermore, tribalism driven by the desire to be superior can and often has resulted in aggression - the use of military force to dominate and exploit other nations and peoples (Walzer 1997, 2004).

5.2 Egalitarian Society

From within moral point of view of fairness it can be argued that citizens should have equal standing operationalized in terms of legal and political equality as well as equality opportunity for social positions and offices. The concept of political equality refers to the principle of equal consideration of the goods and interests of every person in the process of decision making; all adult members are considered equally qualified to participate in the decision-making process.

As an example of this concept of legal and political equality, the equal protection clause of the 14th amendment of the US Constitution, states in part that "No state shall . . . Deny to a person within its jurisdiction the equal protection of the laws". The concept of equality of opportunity refers to the principle that social offices and rewards should be distributed on the grounds of opportunities open to all on an equal basis. These forms of equality instantiate the equal standing of each person and they provide the social basis of self-respect as an equal member of the society. From within the perspective of an egalitarian society, the specific principles that should govern the just distribution of social goods require detail specification and

justification. This is the question of Who Gets What, the question of distributive justice, which will be explored in detail in Chapter 7.

5.3 Cultural Recognition and Tolerance

Given the fact of social pluralism, two further questions are important to consider regarding equal standing: (1) Is a right to cultural recognition necessary for equal standing? (2) Is tolerance necessary for equal standing?

5.3.1 Cultural Recognition

It can be argued that, based upon respect for persons, moral equality and equal recognition, a basic right to cultural recognition is justifiable. If all individuals are intrinsically equal, and if identity is dialogical, then a right to cultural recognition follows. From this perspective, the basic principle of "nondiscrimination" requires differential treatment (Taylor 1992). As Taylor suggests, "Where the politics of universal dignity fought for forms of nondiscrimination that were quite 'blind' to the ways in which citizens differ, the politics of difference often redefines nondiscrimination as requiring that we make these distinctions the basis of differential treatment. So members of aboriginal bands will get certain rights and powers not enjoyed by other Canadians" (Taylor 1992, 39). A difference-blind perspective asserts that that cultural recognition violates nondiscrimination. However, a right to cultural recognition maintains that a difference-blind perspective negates identity by forcing people into a homogeneous mold untrue to them -- "the claim is that the supposedly neutral set of difference-blind principles... Is in fact a reflection of one hegemonic culture" (Taylor 1992, 43). Difference-blindness is criticized for being unable to give due acknowledgment to cultural distinctness.

Philosophers Will Kymlicka and Iris Marion Young argue further that an individual right to cultural recognition should be complemented by group rights to cultural recognition. Such a group right would allow for and facilitate each cultural/ethnic group's right to develop its own culture on its own terms (consistent with the equal rights of others). From this perspective, the idea of equal citizenship is contingent upon a conception of differentiated citizenship. True inclusion of a diversity of cultural persons necessitates group representation; it entails making the public sphere truly representative for both individuals and groups (Kymlicka 1998; Shafir 1998; Young 1998).

In response Jürgen Habermas asks whether an individualistic theory of rights can accommodate demands for cultural recognition (Habermas

1994)? Do historically marginalized cultures require guarantees of status and survival? He maintains that the argument for cultural recognition "calls into question the individualistic core of the modern conception of freedom" (Habermas 1994, 109). Does the demand for cultural recognition follow from respect for the individual? Habermas argues that the theory of individual rights (designed to guarantee autonomy/liberty) ignores half the concept of autonomy/liberty: autonomy can only be attained through authorship of the laws to which one is subject. Thus, autonomy/liberty is both liberal and democratic. There is a necessary, inherent connection between constitutional rights and democracy (Habermas 1994). If: (1) rights and democracy are inherently connected; and (2) identity is formed dialogically; and (3) democracy requires equal respect, then cultural recognition is an implicit part of democracy. In other words, if identity is dialogical, and democracy demands equal respect, then the democratic constitutional state entails inherently equal cultural recognition: there is therefore no need for the specification of "collective rights" (Habermas 1994). Habermas writes:

> A correctly understood theory of rights requires a politics of recognition that protects the integrity of the individual in the life contexts in which his or her identity is formed. This does not require an alternative model that would correct the individualistic design of the system of rights through other normative perspectives. All that is required is the consistent actualization of the system of rights. (Habermas 1994, 113)

> Safeguarding the private autonomy of citizens with equal rights must go hand in hand with activating their autonomy as citizens of the nation . . . differences must be seen in increasingly context-sensitive ways if the system of rights is to be actualized democratically . . . the legal system . . . cannot ensure the integrity of legal subjects without strict equal treatment, directed by the citizens themselves, of the life contexts that safeguard their identities. If the selective reading of the theory of rights is corrected to include a democratic understanding of the actualization of basic rights, there is no need to contrast a truncated Liberalism 1 with a model that introduces a notion of collective rights that is alien to the system (Habermas 1994, 116).

In a similar vein, while acknowledging the importance of diverse identities, Michael Walzer argues that a common political identity, a civic identity, should be preserved as a shared foundation of a pluralistic, democratic society (Walzer 1992).

5.3.2 Toleration

Another important consideration for equal standing is toleration. A key principle of justice related to equal membership and standing (as well as the question of *who's truth?* - Chapter 6) is *toleration.* Under the conditions of pluralism, a key to equal reciprocal recognition of free and equal citizens, and thus a counter to tribalism, is the affirmation of *respect-based tolerance* (Forst 2012, 2013b).

Historically, a *permission conception of toleration* has been prevalent. The permission conception of toleration is based in a relationship between a dominate authority and/or majority and a given minority(s). The dominant authority grants "qualified permission" to the minority to live according to their own beliefs and practices. This grant of permission is however conditional; it is contingent upon acceptance of the power of the authority/majority. The minority accepts its dependent and subordinate position; loyalty and subservience are the price for protection. In this case, however, the terms of toleration involve a *nonreciprocal* granting of permission. It is repressive in the sense that to be tolerated means to accept inequality. It is also disciplining in the sense that it is a means for the dominant authority to effectively preserve power. The permission conception of toleration results in unequal standing and is thus inconsistent with the elements of fairness.

It can be argued that a more normatively justifiable conception is the *respect-based* conception of toleration (Forst 2012, 2013b). It is based in reciprocal recognition across differences; it constitutes respect for citizens as moral and political equals, as free and equal citizens. Mutual toleration is grounded in a shared moral basis of respect for persons as expressed in shared political values and principles. The principles of justice, justified in terms of fairness, are one way the limits of toleration can be defined. Should the limits of toleration be drawn based on identities, or should the limits be based on respect for persons and shared political values and principles of justice?

The idea of toleration has three basic components: (1) *Objection*: finding others' particular beliefs and/or practices unacceptable; (2) *Acceptance*: finding reasons for respecting the beliefs and/or practices of others that override objections and accepting another's' right to freedom of conscience; and (3) *Rejection*: one's reasons for rejecting beliefs and/or practices of others mark the limits of toleration. From this perspective, one respectfully accepts and affirms the rights that justify the other's choices while objecting to the content of some of those choices. For example, one may not accept the religious beliefs of another, thereby objecting to them, but at the same

time, one respects and thereby accepts the other person's right to freedom of conscience which overrides the objection to the content. This objection-acceptance process is the essence of respect-based tolerance. From the moral point of view of fairness, what should define the limits of toleration?

6. Summary

This chapter explored the basic question faced by all societies of *who belongs*? This basic question of social group belonging is one of membership and standing in society: who should be an equal citizen and thus a full participant in the society? Historically, driven by the core human dynamics of tribalism (in-group bias and out-group hostility) and *megalothymia* (the drive to be recognized by others as superior to them), unequal, dominating, and exploitive hierarchical structures of society, both national and internationally, have been prominent in the human experience. As a result, the question of *who belongs* has been a basic source of conflict and in turn an urgent matter of justice.

To counter tribalism and *megalothymia*, it can be argued that the elements of fairness, in particular equal reciprocal recognition, demands that membership and standing *not* be determined by appeal to morally arbitrary, ascriptive characteristics, such as race, ethnicity, religion, gender, or sexual orientation. Regarding membership, we then explored several reasons for and against closed or open national borders; this inquiry explored the question of what standards or principles should guide the inclusion or exclusion of immigrants as potential members of nation-states.

Addressing the controversial questions of immigration from the point of view of fairness and equal rights, all persons are seen to have equal standing in the global moral community and are recognized as free and equal persons within this community as instantiated by a system of human rights. Several basic principles of justice and human rights pertaining to individual membership and standing were discussed: (1) the human right to membership in a nation-state; (2) the human right to seek political asylum under the duress of persecution by one's own government; (3) the human right to emigrate; and (4) the grant of immigration to outsiders grounded in national self-determination, should be regulated by the principles of racial and ethnic non-discrimination, economic fairness (non-exploitation), and tolerance.

Regarding equal standing, the proposition of a right to cultural recognition and the necessity of toleration for protecting equal standing were explored; this inquiry explored whether a right to cultural recognition

is justifiable and necessary, and what kind of toleration is necessary for the protection of equal standing.

7. Peace Constitution Basic Template: Who Belongs?

1) Summarize the basic question of justice being considered - Who Belongs? Who should be considered a citizen and thus a full participant in the society? On what basis should citizenship be determined? Should citizens have equal standing in society, or should citizenship be distributed unequally in terms of a hierarchy?
2) Alternative Principles: Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic question and choose a set of principles of justice.
   i. Membership: Should Citizenship be determined by ethno-nationalism or on the basis of a shared civic identity?
   ii. Principles of Immigration: To what degree should the borders of nations be open to new members? Should immigration be determined by *ethno-nationalism* or by *civic identity*? Should nations offer political asylum to politically oppressed and threatened foreign persons? Should making an economic contribution to the society be a criterion for immigration? If so, should the exploitation and oppression of workers be impressible?
   iii. Standing: Should all citizens have equal standing? Is a right to cultural recognition necessary for equal standing? Is toleration necessary for equal standing? What kind of toleration is most conducive to equal standing?
3) Justification: Articulate a justification of choice of principles by employing the elements of fairness (equality, recognition, reciprocity, and impartiality). *From the moral point of view of fairness, are the principles justifiable?* Consider also why alternative principles are unjustifiable.
   i. Equality: Does it recognize and treat all persons as equals?
   ii. Recognition: Is it consistent with respect for persons?
   iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
   iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4) Conclusion: Summarize your choice of principles and their justification.

CHAPTER SIX

WHOSE TRUTH?

In this chapter the question of *Who's Truth?* is explored. A fundamental challenge for every society is how to adjudicate conflicts of knowledge and belief, a contentious process which inevitably involves wrestling with essential questions of justice and peace (Rauch 2021). This is especially true when, as is often the case, beliefs are identity-defining. As Jonathan Rauch points out: "The problem of maintaining peace in the face of ideological conflict is an existential challenge for every human society: no society can long exist without managing it" (Rauch 2021, 39-40). The ancient philosopher Plato, for example, argued that justice and social order were contingent upon truth and knowledge. For Plato, truth was especially important politically, for human beings are prone to a vast array of conflicting opinions that often turn into political conflict and disorder. Plato's legitimate concern, and those who followed him, was the influence of false opinion, both intentional and unintentional, on political decision making; if society is governed by ignorance, then it will fall into disorder and injustice. Conflict around knowledge and truth can quickly become political conflict. The problem of truth is social: "it is a problem about reaching, or failing to reach, a working consensus. The knowledge problem centers not on what you, or what I know, but on what we know" (Rauch 2021, 53-54).

Therefore, how can it be assured that society is governed by citizens and/or leaders who are capable of resolving conflicts concerning knowledge and truth? Under the conditions of pluralism and diverse opinion, how is the truth sorted out from error? How is the question of belief settled? How and who decides what is correct? What is the valid basis of the determination of truth? What principles can be identified and employed to settle knowledge and truth conflicts? Who should decide on what counts as knowledge and thus have the power to adjudicate truth conflicts? As discussed below, this issue is exacerbated by identity and social pluralism where the world is known from the point of view of different perspectives (Rauch 2013). As Jonathan Rauch suggests, "Any system for deciding who is objectively right is a social system and so has political consequences" (Rauch 2013, 12). In

other words, knowledge (epistemology) is political: it is about power, since the decision of what counts as truth and knowledge may favor the interests of some over others.

Furthermore, the recognition that knowledge is power and is therefore political, relates more specifically to who has control over the space of reasons of justification. As the political philosopher Rainer Forst suggests, power is found within the space of reasons, the realm of justifications, and is therefore essentially discursive (Forst 2017). To be subjected to power is to be motivated by reasons that moves one to think or act in particular ways (Forst 2017, 38). As Forst (2017) suggests:

> The exercise and effects of power are based on recognition of a reason—or… various reasons—to act differently than one would have acted without that reason. This recognition resets on seeing a 'good enough' reason to act. It means that you see a *justification* for changing how you were going to act. Power rests on recognized, accepted justifications … threat can be seen as such a justification, as can a good argument. But power exists only when there is such acceptance (p. 41).

In other words, power is the capacity to "determine the space of reasons within which social or political relations are being framed - relations which form a structured, durable, and stable social order of action and justification" (Forst 2017, 49). Unjust social structures and practices are sustained by invalid justifications and patterns of thought that constitute cultural violence (Galtung 1990, 291–292). Hence, the question of *who's truth?* is a fundamental question of justice and peace (Rauch 2013).

In exploring the question of whose truth, we can employ Charles Sanders Peirce's four methods of settling beliefs and opinions (Peirce 1877). Peirce's four methods are tenacity, social acceptance, authority, and science. The method of tenacity is the attempt to hold on to one's belief by avoiding competing reasons that would challenge it. It is a kind of reasoning by avoidance. The method of social acceptance is an appeal to reasons that are generally accepted in one's social and cultural context, and taking the validity of what is accepted at face value without any further reflection or critical scrutiny. The method of authority is for a recognized elite to supply and validate belief and to enforce it by force or coercion if necessary. The method of science, broadly defined, is to subject truth claims to critical public scrutiny grounded in established and recognized methods and standards of inquiry. Truth claims that survive such inquiry become settled and established (Peirce 1877).

In what follows we will explore the validity of each of these methods as they apply to settling belief. It will be argued that we should appeal to the

method of "science" and critical public scrutiny to settle belief and explore ways in which belief and truth can be distorted and weaponized in terms of disinformation. The basic question to be reflected and deliberated upon is: what principles of justice pertaining to the process of fairly settling truth and belief should be adopted? What principles are most consistent with basic rights of freedom and the elements of fairness? We begin with a review of Peirce's four methods of settling belief.

1. The Method of Tenacity

The method of tenacity is an attempt to hold onto one's favored belief in the face of disagreement by closing it off from competing claims and ideas. It is grounded in a common desire to avoid cognitive dissonance. When in conflict with competing differences of opinion and belief, differing beliefs are dismissed to avoid cognitive dissonance. This avoidance often manifests as confirmation bias. Confirmation bias is the process of giving more weight to evidence and ideas that confirm one's preexisting beliefs, thereby choosing to give validity to only those reasons that confirm one's existing belief. From the perspective of tenacity, a proposition is true because one believes it is true.

The problem with tenacity is that it leaves us positionally confined to existing beliefs, and closed to the possibility that we may be mistaken. It leads to relativism: claiming to be correct because believing in the validity of one's belief is seen to be sufficient justification for its validity. This method is solipsistic and thereby relativistic; it claims validity of one's opinion merely on the grounds that one holds that opinion to be valid. Given its solipsism and relativism, the diversity of belief can never be settled through the method of tenacity. Its tenets do not address the core issue - how to come to an agreement among diverse points of view. The claim that one knows the truth without verification from others is baseless. Knowledge is always in some way public. A proposition is not knowledge unless it is made public (Peirce 1877; Rauch 2013, 2021).

2. The Method of Social Acceptance

A second possible method of settling belief is appealing to beliefs that are widely shared and socially accepted as the means of justification of the validity of those beliefs being true, and therefore, accepted as valid knowledge. The social fact that the belief is widely shared and accepted is taken to be sufficient justification for its validity. It is true because *we*, *not I*, believe it is true. Beliefs are necessarily positional; they are conceived

relative to one's position. The method of social acceptance suggests that validity is defined as invariance of observation when the position of many observers is fixed. Validity grounded in social acceptance is person invariant but position relative: to say that a view is valid is to say that there exists no variance in observation if the position of the observers is the same (Sen 2009). We do not have direct epistemic access to the world; our experience of the world is always conditioned and shaped by the mind. Knowledge is therefore always framed in terms of propositions about the world and not direct apprehensions of things in themselves (Popper 1972). Therefore, the propositions and beliefs that are shared in our social group shape how we make sense of the world. In other words, belief, understanding, and meaning occur within a "hermeneutic circle" or "horizon" wherein belief is generated from an interpretive act of integration of the part within the larger whole of a larger context: a text, rules of a social institution, life context, culture, tradition, language, etc. (Al-Daraweesh and Snauwaert 2015, 2018; Zimmermann 2015). This method of social acceptance for settling belief, therefore has a certain degree of legitimacy, for intersubjective warrantability/agreement is a necessary element of the justification of the validity of knowledge claims.

However, as Amartya Sen points out, there exists the possibility of positional objective illusions: many observers occupying the same position standing on an ocean beach will agree that the moon appears to be larger than the sun and that the earth is flat! These observers suffer from an objective illusion. There can be intersubjective agreement from the same position, however, that agreement can be mistaken. Socially accepted beliefs can be wrong, false, mistaken (Sen 2009). Moreover, as discussed in Chapter 5, regarding our social knowledge, perceptions and understandings of others are shaped by inferences regarding the attributes of groups, and the individuals that comprise them, structured by in-group and out-group categorizations (Tajfel et al. 1971). Group categorization is the way we to tend to create the social boundaries which shape our self-identity, orienting us to the social world (Klein 2020; Taylor 1992). We have a basic need for both inclusion in our in-group, and differentiation from out-groups (Brewer 1991). Our need for social belonging, and the possibilities of in-group bias and positional confinement that goes with it, suggests that even if something is believed by all the members of a social group, the shared belief does not provide sufficient justification that it is correct to believe it, for such belief, even though widely shared, can, and historically often has been, mistaken. While social acceptance or intersubjective warrantability, is a necessary condition for knowledge, it is not a sufficient condition. The fact that a belief is widely accepted cannot alone justify its validity. It can be argued that the

method of social acceptance for settling and justifying knowledge is incomplete.

3. The Method of Rational Intuitionism

A third method for settling the validity of truth and knowledge is to appeal to the authority of those who are taken to have access to the truth (Rauch 2013). This method rests upon the metaphysical claim that there exists a universal, independent moral and epistemological order to the universe which can be comprehended and known. We can refer to this method as "rational intuitionism". Of course, it is logically possible that the capacity for the comprehension of this order is a general human capability; however, from its inception, the method has been based in the assumption that a rare few have the intellectual and/or intuitive capacity to comprehend the moral and epistemological order of the universe. Historically, this elite has claimed to know the truth based upon a capacity rational intuitionism, a capability for either direct intuition of the Truth or for interpreting the intuitions of a recognized seer, philosopher, or prophet.

Furthermore, it is claimed that the key to a just and peaceful society is the establishment of a political authority to resolve truth conflicts, an authority grounded in the claim of knowing the Truth (Rauch 2013). Those who are in possession of authentic knowledge, the truth, should govern society. For example, Plato argued that philosopher Kings and Queens should rule (Plato 1979). His answer, as Jonathan Rauch suggests, was a potent "intellectual authoritarianism … he saw no other way to resolve the difficult political problem of intellectual conflict. … we are obliged to put truth-identifying power only in the hands of our very wisest citizens. … appoint the extraordinary thinker as arbiter of truth. Plato's logic stood dominant for two thousand years" (Rauch 2013, 41). The method of authority was extended by Aristotle, the Neoplatonists, and Stoics, and was eventually incorporated into Christianity by Augustine and then later by Aquinas. It was then maintained throughout Medieval Christianity up to the Enlightenment (Hadot 2002; Hirst 1973; Jaeger 1943, 1953). It is also prevalent in many other cultural traditions, including the prophetic religions of Judaism and Islam, as well as Vedic and Hindu traditions, among others.

There are, however, at least two problems with an appeal to rational intuitionism as a method of justification/settling belief: (1) the claim of epistemological certainty is untenable, and (2) validating that an elite have attained the truth relies on power.

3.1 The Claim of Epistemological Certainty

Regarding the claim of epistemological certainty, knowledge claims based upon experience rely upon the methodological process known as *induction*. Induction is generally defined as the derivation by inference of a general natural law from a particular range of experience. The truth of the generalization is justifiable by inference from experience. However, as David Hume pointed out, there is a central and seemingly unsolvable problem with induction so conceived. The certain truth of generalizations from experience can never be verified by inferring them from experience. This is the case since verification would logically require a *complete* set of facts about the world, which is not possible. Secondly, one could argue that it is our experience that provides accurate and reliable predictions about the world; however, this argument is logically circular as it relies on induction to validate induction. Another element of the problem can be expressed in terms of the uniformity of nature. Induction assumes that nature is uniform in the sense that future experience of nature will resemble past experience, and this allows us to infer causal relations. However, this uniformity of nature and experience is precisely what needs to be established for induction to be valid. Thus, there is no rational basis that confirms the validity of induction (Hume 2009 [1854]-b, 2009 [1854]-a).

Rebuttals to the conclusions generated by the problem of induction concede that certain verification of hypotheses, theories, or general laws of nature, is *not logically* possible. Proponents of inductive inquiry maintain that the rational basis of induction, its rational justification, is *not* dependent upon verifiable certainty, arguing that in the case of inductive inquiry, certain verification is the wrong standard of rationality. Proponents maintain that a *degree of confirmation* in terms of probability, rather than certain verification, should be the rational standard. The problem of induction suggests that we can claim only provisional knowledge, not certainty (Peirce 2009 [1934]; Reichenbach 2009 [1961]).

However, uncertainty implies that we may be mistaken, that our understanding is always open to error and correction. Furthermore, the problems of uncertainty and fallibility are exacerbated by what John Rawls referred to as the “burdens of judgment” (Rawls 2001, 1993), as well as what psychologists refer to as “motivated reasoning.” John Rawls identified elements of human reasoning that can lead to disagreement; "… the sources of reasonable disagreement - what I call the burdens of judgment--among reasonable persons are the many obstacles to the correct (and conscientious) exercise of our powers of reason and judgment ...." These *Burdens of Judgment* include the following:

(a) *Evidence* bearing on a case may be conflicting and complex, and thus hard to assess and evaluate.
(b) There can be *Disagreement* about the weight of considerations, about what is important to consider.
(c) To some degree our concepts can be vague; this *Indeterminacy* means that we must rely on judgment rather than certainty.
(d) The way we assess evidence and weigh moral and political values is shaped by our total experience; and our *lived experiences* surely differ.
(e) Different forces of normative considerations on both sides of a question make it difficult to make an overall assessment (Rawls 2001, 35-36).

Moreover, the exercise of reason is influenced by what we want to believe, (motivated reasoning). What we believe colors our perception of what is true in the following ways: Confirmation bias is a tendency to give more weight to information that confirms our preexisting beliefs and thereby choosing to give validity to only those reasons that confirm our existing beliefs; and conformity bias is a tendency to *socially conform to* the beliefs of others in our in-group and to reject the beliefs of out-groups. Furthermore, conformity bias is also *identity protective* in the sense that it *preserves one's status in the group thereby protecting one's identity* (Klein 2020; Mason 2018; McIntyre 2018).

The problems of induction, epistemological uncertainty, acknowledging the burdens of judgment, as well as the prevalence of motivated reason (our tendency toward confirmation, conformity, and identity protective bias), casts significant doubt upon the capability of the method of rational intuitionism to settle and justify truth.

3.2 The Question of Validating the Possession of Truth

Rational intuitionism posits the claim that an independent order of universal truth can be known. The question then arises who will validate possession of the truth, and on what basis? The logical answer would be that those who know the truth will validate that the truth claims of others are valid. However, we are caught here in a logical regress, for who will validate those who validate those who possess the truth, and so forth, *ad infinitum*. Given this logical validation problem, possession of political power has tended historically to be the dominate basis for the arbitration of truth; in contradiction to Plato's philosophical hopes, persons with political power have been the arbiters of the truth and not the other way around. Historically, such truth claims have been coercively enforced by political authorities, including governments as well as cultural institutions such as religious organizations. By dint of political power, it has often been claimed that

authorities have the right to coercively impose the truth. Believe or die, has been a common edict. For the reasons spelled out above, the fact that a belief in the truth is alone proclaimed by an elite authority cannot justify its validity. Nor can the fact that an authority has the political power to impose a belief provide justification—coercive imposition does not provide either epistemological or normative validation.

4. The Method of Science

Given that the methods of settling questions of knowledge and truth discussed above have been shown to possess insufficient justification for validity claims, the American philosopher Charles Sanders Peirce asks on what basis can belief be settled, in other words, on what basis can knowledge be validated (Peirce 1877)? What is the rational basis of justification of provisional propositional knowledge, under the conditions of fallibility, bias, and uncertainty as outline above? On what grounds can propositions be established as provisionally true? Given the problem of induction (certain proof is unattainable) and our susceptibility to error and bias, are knowledge and truth possible?

At least one way, perhaps the only way, to justify the validity of propositions under these conditions is to check for error, and to subject our claims to critical scrutiny, that is, to attempt to disconfirm or falsify our knowledge claims. Those propositions that survive, we can inter-subjectively agree are warranted. Their validity stands until the time they are falsified or disconfirmed. Established knowledge claims are those that have withstood scrutiny over time; however, they remain provisional because they remain open to disconfirmation.

From within this perspective, the task of knowledge inquiry is not to search for certainty but to search for and find error. In other words, the process of inquiry should be understood as seeking *disconfirmation* of the truth of one's propositions based upon established methods and standards of inquiry (Rauch 2021). Similarly, the philosopher of science, Karl Popper maintains that the rational basis of inquiry is the testing of hypotheses in order to determine whether they survive attempts to falsify them (Popper 1972). The method of inquiry is falsification, the testing of hypotheses. Based upon the above reasoning, knowledge pertains to sets of propositions which have survived critical scrutiny and thus have been validated; they have been truth-tested (Rauch 2013). The propositions that can survive critical scrutiny are those we take, *provisionally*, to be validated, established knowledge. From this perspective, knowledge is grounded in intersubjective agreement generated from a process of critical reasoning.

In order to be established as knowledge, a proposition must be scrutinized from the perspective of multiple viewpoints (Rauch 2021). According to Peirce, "the method must be such that the ultimate conclusion of every man shall be the same. Such is the method of science" (Peirce 1877, 10). In other words, the key to settling and establishing beliefs and opinions as knowledge is to submit them for checking and testing, subjecting them to the processes of critical scrutiny and disconfirmation through the application of replicable methods of inquiry.

This method also implies that no one is above error and that no individual can claim authority. The method of science is a social enterprise, a network form of epistemology wherein propositions are subjected to public critical scrutiny (Rauch 2021, 2013). This method is an appeal to public reasoning and not to individual belief, social acceptance, or intuitively certain knowledge. It is an appeal to a more valid type of social acceptance: intersubjective agreement based upon critical public reasoning. In doing so, the method of science avoids the inherent problems of the three alternative methods of settling belief.

5. The Constitution of Knowledge and Principles of Justice

As the scholar and journalist Jonathan Rausch has argued in his book *The Constitution of Knowledge,* as well as his earlier work *Kindly Inquisitors,* the method of science has been institutionalized in terms of an academic and professional social network of institutions (Rauch 2013, 2021). This social network of institutions and practices constitutes an "epistimic regime" (Rauch 2021, 75-76), which comprises an important element of the basic structure of society, both national and international. The practice of public critical scrutiny of a vast array of propositions of knowledge is ongoing globally. It is one of our most improtant institutions, for it allows for the nonviolent resolution of conflicts of knowledge and belief within and across societies. This epistemic regime, an essential structure of critical knowledge checking practices, has been organized from the academic disciplines (ranging from the natural and social sciences to the humanities) to the professions (ranging from journalism and law, to medicine, etc.). Each of these disciplines and professions has its own logical structure; however, each disciplinary structure is grounded in and embodies the method of science/scholarship as public critical scrutiny. As the American philosopher John Dewey put it: The knowledge most worth knowing is "knowledge of the ways by which anything is entitled to be called knowledge instead of being mere opinion or guess-work or dogma" (Dewey 1995 [1910], 395). It is "what is required in the way of thinking and

of search for evidence before anything passes from the realm of opinion, guess-work, and dogma into knowledge" (Dewey 1995 [1910], 396).

Jonathan Rauch suggests that the social network of knowledge creation, operating as public critical scrutiny in the various forms of disciplines and professions, is comprised of core values and rules. Rauch maintains that "What sets it apart is not that it is distinct from all other communities but that its members operate and interact on the basis of generally shared (if sometimes disputed) values and rules; they embrace the authority of those values and rules, rather than the authority of any particular individual or social group; and they hold each other accountable" (Rauch 2021, 70). There are two basic rules: what Rauch refers to as "the fallibilist rule" and "the empirical rule".

The fallibilist rule maintains that propositions, beliefs, and opinions are validated as knowledge only it they are open to falsification/ disconfirmation/ public critical scrutiny. If a proposition survives critical public scrutiny, then it counts as knowledge. If not, it fails and is rejected as an unfounded opinion. This rule assumes that every proposer of propositions is fallible and that even if a proposition is validated, that validation is not final; it is open to further scrutiny, and new evidence, insight, or logical argument may lead to its subsequent rejection. Therefore, fallibility assumes also that knowledge is always provisional. Furthermore, it suggests that no one gets the final say; the pursuit of knowledge is open ended.

The empirical rule maintains that the method used to check propositions must give the same result independently of both the proposition's source *and* those who are checking it. In other words, no one has personal authority in the realm of knowledge and truth; in this context, "who you are does not count" (Rauch 2021, 89). This rule defines what properly counts as scrutiny. "It requires that propositions are contestable, subject to systematic, organized comparison and criticism from diverse points of view" (Rauch 2021, 90). The empirical rule also identifies what is not valid scrutiny: claims to authority by dint of personal or social privilege are not valid. The empirical rule is a social principle, in that it gives authority not to any one person or group but to communities of discourse that are open and global. Furthermore, it should be noted that this approach to settling knowledge assumes that bias is inescapable (for the reasons already discussed above), however, it uses bias against itself, in the sense that the employment of public critical scrutiny engages a vast community of checkers working to uncover and correct each other's mistakes and distortions.

It can be argued that these two rules of the constitution of knowledge are consistent with the elements of fairness and thus are normatively justifiable from within the perspective of moral reasoning. The recognition of

fallibility and that no one has the final say are based in equality and recognition. Every citizen of the constitution of knowledge has equal standing, in the sense that anyone can put forth a proposition. Fallibility maintains that no one is a knower of absolute, certain truth; everyone is burdened by error and bias. Fallibility suggests that we cannot appeal to personal or tribal authority as the source of knowledge. We are all equal in that sense. Each potential knower is equally recognized in the community of discourse, although some, through their dedicated efforts can earn a more credible voice in the coummnity of discourse through recognized achievement (and not ascriptive characteristics of their person or social group).

The constitution of knowledge is also consistent with impartiality. The empirical rule is a principle of impartiality, in the sense that the method of critical public scrutiny must give the same result independently of both the proposition's source *and* those who are checking it. This independence is the hallmark of impartiality. It is an appeal to the exercise of the method of inquiry, rather than personal or tribal authority, that is the arbiter of truth and knowledge. Truth is settled by appeal to the community of discourse and its rules and methods, not personal power. No personal epistemological authority is the essence of impartiality.

The constitution of knowledge is also consistent with reciprocity. The social network of knowledge is a kind of social compact wherein there exists a mutual reciprocal agreement to follow the two rules as the means of settling truth and knowledge. Every legitimate member of the community of knowledge agrees to and affirms these rules and holds all others to them through processes of peer review. The validity of the constitution of knowledge is in part grounded in this reciprocal consensus of its rules and principles; it is a well-ordered society of knowledge.

Furthermore, in addition to the fallibilist and empirical rules, the constitution of knowledge also includes an architecture of rights. It requires the protection of several rights, including rights to academic freedom, freedom of thought, conscience, inquiry, speech, and association - in other words, a basic scheme of liberty. This epistemic system can only work if people are able to assert their propositions free of any type of coercive interference or suppression, and able to freely engage in critical scrutiny of those propositions in public forums. No propositions, even apparently offensive ones are suppressed as such; every proposition is critically checked and scrutinized based upon established standards of inquiry and evidence. Freedom is essential for the pursuit and settling of truth and knowledge.

This basic scheme of rights to freedom of thought invokes toleration as a fundamental correlative duty in this context. There is continual disagreement about propositions and beliefs; this disagreement is a feature of a free system of knowledge creation. Freedom of thought, conscience, inquiry, speech, and association generates diverse points of view and thus disagreement. However, for the knowledge system to work it requires diverse points of view and disagreement generated through protected freedom. As noted, it uses this diversity of opinion as a means of public critical scrutiny. Pluralism (diversity of points of view) is a fundamental value of the constitution of knowledge, and a respect-based conception of toleration of diverse points of view and diversity of opinion is essential (Forst 2012, 2013b), as discussed in Chapter 5. Respect-based toleration is grounded in reciprocal, horizontal recognition across differences, and thereby respects citizens as equals. Mutual toleration is grounded in a shared moral basis of respect for persons as expressed in mutually affirmed values and principles.

As we have discussed, moral reasoning grounded in fairness pertains to the exercise of a duty to provide valid reasons of justification to others. This duty is also presupposed in the constitution of knowledge - the method of science is grounded in the reciprocal duty to provide justification for one's propositions. This duty to offer justification is correlated with the right to justification (Forst 2012). Each person has a basic right to receive justification from others in both matters of justice *and* knowledge, and in turn to provide justification to others. It is what we owe to each other. Justification extends particularly to the public sphere where citizens deliberate regarding the truth and knowledge. The constitution of knowledge rests upon a right and duty of justification.

The social network of knowledge rests upon a normative constitution of knowledge that includes two basic rules, the fallibilist and empirical rules, which are protected by the fundamental rights to freedom, and a right and duty of justification. The constitution of knowledge is thereby comprised of a normative set of principles of justice.

6. Disinformation and Propaganda: Threats to the Constitution of Knowledge

It is often acknowledged that knowledge is power. As noted in the introduction to this chapter, epistemology is therefore political, and thus it relates to who has control over the space of reasons of justification. As the political philosopher Rainer Forst suggests, power is found within the space of reasons of justifications. Those who seek to concentrate and consolidate

political power attempt to control the space of reasons by trafficking in propaganda and disinformation that distort the space of justification. It is the weaponization of the tendency toward tribalism, the burdens of judgment, error, and bias that were discussed earlier. We are very susceptible to disinformation. Inherent cognitive bias, as well as the fallibility of reason (burdens of judgment), make us susceptible to manipulation and exploitation through propaganda, especially when others tell us what we want to hear.

Unjust social structures, including controlling political power, are sustained by invalid justifications and patterns of thought, that can manifest in a weaponization of bias. These invalid justifications often involve attacks on truth, expertise, freedom of thought, language, and education, but fail to survive when brought under the light of critical scrutiny. The delegitimization of the method of science and the constitution of knowledge and truth, expressed as hostility to the very idea of truth itself, is a prominent feature of attempts to distort and undermine the space of justifications. It is often executed by repeated dishonesty and the advocacy of conspiracy theories. Furthermore, there is a concerted effort to delegitimize institutions that promote and sustain independent thought, notably universities, the professions, and the free press, which undermines the value of critical scrutiny as the means to settle truth. This attack on truth and its institutions leads to the delegitimization of valid moral, legal, and epistemological norms. This normative delegitimization degrades and debases public deliberation, turning it into mere sloganeering and appeals to fear and anger, rather than reasoned argument (Frum 2018; McIntyre 2018; Snyder 2018; Stanley 2018).

The effectiveness of the weaponization of bias is strengthened by the acceptance of the idea of “post-truth” (Snyder 2017). For the purposes of the political subordination of reality, post-truth is the contention that feelings are more accurate than facts, "a conviction that facts can always be shaded, selected, and presented within a political context that favors one interpretation of truth over another." So-called “alternative facts” (McIntyre 2018, 17-18). It is a disposition to accept only those facts that justify and/or cohere with one's ideology; in this sense, facts are subordinate to ideology, giving ideology supremacy. One’s affirmed ideology becomes more important than truth confirmed through the process of public critical scrutiny.

The weaponization of post-truth/cognitive bias in the form of propaganda is a means to exploit and strengthen an ideology. “At its core, propaganda is a set of communication strategies designed to sow confusion and uncertainty, discourage critical thinking, and persuade people that

reality is what the leader says it is" (Ben-Ghiat 2020, 183). The purpose is not merely to deceive, but to rule, not to communicate information, but to get us to "pick a team" in an attempt to seize authority over the truth itself. As General Valery Gersimov, Chief of the General Staff of the Russian Armed Forces suggests:

> Of great importance here is the use of the global internet network to exert a massive, dedicated impact on the consciousness of the citizens of states that are the targets of the aggression. Information resources have become one of the most effective types of weapons. Their extensive employment enables the situation in a country to be destabilized from within in a matter of days .... In this manner, indirect and asymmetric actions and methods of conducting hybrid wars enable the opposing side to be deprived of its actual sovereignty without the state's territory being seized (cited in Nance 2018, 223-224).

The strategic aim is destabilization and delegitimization of established democratic norms and values as well as to exacerbate ethnic identity polarization and alienation ("tribalization") in order to undermine the possibility of rational discourse among citizens, including reasonable disagreement. As the historian Timothy Snyder noted: "Post-truth is pre-fascism." Sowing confusion, doubt, and division is foundational to the establishment of political authoritarianism (Snyder 2017, 68).

The power of the weaponization of tribalism and bias in various forms of disinformation is exponentially increased by the existence of social media. Social media can and does function in many ways as disinformation on steroids. The coding algorithms that drive social media platforms are designed to capture and fixate the attention of users in order to maximize the profitability of platform advertisers. The algorithms push and confine attention around stories and issues that have gone viral: in effect, they create in-group bubbles wherein confirmation and conformity bias are fueled, creating perfect media platforms for propagandists (Harris 2021; Mettler and Lieberman 2020; Orlowski 2020).

7. Summary

In this chapter, *Whose Truth?* the basic question and problem for every society of how to adjudicate conflicts of knowledge and belief, has been explored. Conflict concerning knowledge and truth often erupts into political conflict. Knowledge is power and therefore epistemology is political. In exploring the question of whose truth, we employed Charles Sanders Peirce's four methods of settling beliefs and opinions (Peirce

1877), which framed our discussion of moral reasoning as the method of normative justification. As discussed, Peirce's four methods are tenacity, social acceptance, authority, and science. The method of tenacity is the attempt to hold on to one's beliefs by avoiding competing reasons that would challenge them. It is a kind of reasoning by avoidance. The method of social acceptance is to appeal to reasons that are generally accepted in one's social and cultural context, and to take the validity of what is accepted at face value without any further reflection or critical scrutiny. The method of rational intuitionism claims that a universal Truth exists and can be known by a recognized cultural elite which supplies and validates that Truth and may enforce it by force or coercion if necessary.

The method of science, broadly defined, is to subject belief to critical public scrutiny grounded in established and recognized methods and standards of inquiry. Beliefs that survive such inquiry become settled and established (Peirce 1877). It was argued that we should appeal to the method of "science" of critical public scrutiny to settle belief, and that method is grounded in what Jonathan Rauch refers to as the constitution of knowledge.

The constitution of knowledge is comprised of the rules, values, and principles that govern and support the pursuit of knowledge based in public critical scrutiny. These rules, values, and principles include the fallibilist rule, the empirical rule, basic rights to freedom of thought, conscience, speech, inquiry, and association, toleration, and the right to and duty of justification. Together they comprise the constitution of a well-ordered global epistemological social network. It can be argued further that the principles of this constitution are normatively justifiable, that is, consistent with the elements of fairness. We also explored the ways in which society and the process of establishing justifiable claims to knowledge and truth can be undermined for political purposes through the weaponization of tribalism and bias through the propagation of disinformation. The method of science and the principles of the constitution of knowledge are a bulwark against post-truth and disinformation, and thus, political authoritarianism.

8. Peace Constitution Basic Template: Whose Truth?

1) Summarize the basic question of justice being considered: how should the truth be determined as well as the adjudication of conflicts of truth?
2) Alternative Principles: Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic question and choose a set of principles of justice. Which of the four Methods of Settling Beliefs articulated by Charles Sanders Peirce is

most valid: Tenacity, Social Acceptance, Rational Intuitionism, or Science?

3) Justification: Articulate a justification of choice of principles by employing the elements of fairness (equality, recognition, reciprocity, and impartiality). From the moral point of view of fairness, are the principles of the constitution of knowledge justifiable? Consider also why alternative principles are unjustifiable.
   i. Equality: Does it recognize and treat all persons as equals?
   ii. Recognition: Is it consistent with respect for persons?
   iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
   iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4) Conclusion: Summarize your choice of principles and their justification.

CHAPTER SEVEN

WHO GETS WHAT?

The purpose of this chapter is to explore and discuss prominent conceptions of distributive justice within national societies and beyond to the question of global distributive justice. Distributive justice concerns the question of *who gets what*? This question concerns: What defines the most justifiable, the fairest, distribution of social goods? What should be the scope of distributive justice? Should distributive justice include environmental justice? In other words, the principles of distributive justice tell us how the benefits and burdens of living in society together *should be shared*.

Given the assumption that we consider ourselves as morally equal, intuitively, *distributive equality* would seem to be most justifiable. A strictly numerally equal distribution would seem at first glance to be the fairest. However, distributive equality may not be just, for (1) it does not consider differential levels of achievement and performance, nor (2) different levels of need. If distributive equality is unfair, and thus some fashion of distributive inequality is justifiable, then, given moral equality, on what normative basis can distributive *inequality be justifiable?* On what grounds are we to determine an unequal but fair distribution of social and economic goods? The meaning of a just and peaceful society is contingent in part upon how we conceive an unequal but justifiable distribution of social goods. To make that determination we need principles of distributive justice. Thus, reflection upon the various approaches to, and conceptions of, distributive justice is foundational to the pursuit of positive peace (a counter to structural violence). Furthermore, justifiable and affirmed principles of justice are important tools that empower citizens and thereby are essential for the establishment and maintenance of a just peace.

Distributive justice is concerned with what society values and identifies as the good and the right: What is good? What is right? What is the relationship between the good and the right? Does the just distribution of a good depend upon the nature of the good being distributed, or is a just distribution (right) independent of the nature of particular goods? How these questions are answered shapes the approach to moral deliberation and reasoning about distributive justice. In the history of theorizing about

distributive justice, the relationship between the good and the right have been defined in terms of two major theoretical orientations outlined below.

The *Deontological Orientation* of distributive justice defines what is right or just, prior to and independently of conceptions of the good. In turn, the conception and pursuit of the good is regulated by the right - expressed by Rawls as the "priority of right" (Freeman 2007, p. 62-72). As Freeman (2007) put it:

> Principles of right and justice are prior and therefore govern our deliberations, not just about what we may do, but also about the ends and interests that individuals and societies may legitimately pursue. As such, the priority of right defines a notion of permissible ends and (morally) admissible (or reasonable) conceptions of the good. Reasonable conceptions of the good are those whose ends and activities accord with the requirements of the principles of right (p. 63).

From the perspective of the deontological orientation, the process of determining what is a right or just distribution of social goods is relational - it rests upon a conception of right relationships between citizens grounded in respect for persons and not the direct realization of social goods as subjective states of affairs.

The *Teleological Orientation* of distributive justice proceeds with the prior specification of an independent ultimate good; a teleological theory seeks to identify and define what is ultimately good or basic to a decent human life: what each person seeks to realize in their lives, such as happiness. *The good is the content of what each person is due*, that is, what a person values and is justified in claiming as necessary to realize a good life based upon an understanding of who they are and want to be. The process of determining what is right or just distribution, is comparative; it rests upon comparing subjective states of affairs. The right is that rule, law, or policy which generates the best realization of those valued states of affairs.

As will be discussed in what follows, the distinction between these two orientations of distributive justice not only shapes what we should look for in considerations of the fair distribution of social goods, but these distinctions also shape the logic of determining what is just. In other words, the question is: what is the most justifiable focus of distributive justice? Should we look to principles that regulate the institutions that determine the distribution of social goods, or to the realization of valued states of affairs of citizens: their well-being; capabilities; happiness; etc., that are generated from distributions of social goods? We turn first to the deontological orientation and its focus on *principles*.

1. Deontological Theories of Distributive Justice

In this section we will explore the principles of prominent deontological theories of distributive justice. As noted above, within deontological theories of distributive justice the right is defined prior to, and independently of, the conception of the good and in turn the conception and pursuit of the good is regulated by the right. The prominent theories of justice put forward by John Rawls and Robert Nozick respectively are outlined in further detail below.

1.1 John Rawls: Justice as Fairness

The American philosopher John Rawls articulates and defends a deontological theory of distributive justice framed for a democratic society. His basic question is "…what principles of justice are most appropriate to specify basic rights and liberties and to regulate social economic inequalities in citizen's prospects…" (Rawls 2001, 41)? Rawls argued for two principles of justice as follows:

1) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties for all.
2) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle) (Rawls 2001, 42-43).

The first principle establishes a just constitutional regime that guarantees equal rights to a basic scheme of negative and positive liberty. The basic aims of stipulating rights to liberty are the development and exercise of citizens' moral powers and to guarantee social cooperation on a footing of equal respect.

The second principle refers to the rules for social and economic justice. It employs a principle of reciprocity—inequalities in distribution should benefit not only the well-off, but also the least advantaged. The second principle stipulates that the unequal distribution of basic social goods is justifiable if and only if they result from fair equality of opportunity and are to the benefit of the least advantaged. These two principles are designed to regulate the distribution of social goods within the basic institutional structure of a democratic society (Rawls 1971, 2001). The basic aims of stipulating the second principle of fair equality of opportunity and the difference principle is to guarantee the fair value of liberty and the social

basis of self-respect. Furthermore, this principle seeks to prevent political resentment and disengagement, thereby securing political and social stability (Rawls 1971, 2001).

Fair equality of educational opportunity affirms that social opportunities to attain valued resources and social positions should not be determined by morally arbitrary social characteristics, such as a person's social economic status (social class), race, gender identification, ethnicity, sexual orientation, religion, or culture, among other social characteristics. It comprises a higher standard than formal equality of educational opportunity, which is designed to guarantee equal access to public institutions. Fair equality of educational opportunity stipulates that persons of equal talent and ambition should have the same probability of benefiting from the same valued resources and social positions irrespective of ascriptive characteristics. In other words, social class, race, gender, or ethnicity *should not* be a factor in determining the success of a person in a just society. The principle of fair equality of opportunity is consistent with the moral conviction that contingent, morally arbitrary facts about persons should not determine one's position and role in society, socially, economically, legally, and politically, nor the rewards and benefits to which one may be entitled (Rawls 1971, 2001).

The "difference principle" (second half of the second principle) is designed to ensure social equality and the fair value of liberty by mandating that *any* inequality in the distribution of opportunities, and in turn rewards resulting from the enactment of the principle of fair equality of opportunity, benefit the least advantaged members of society (Rawls 1971, 2001). Rawls conceives these social opportunities and rewards as *primary goods*, in the sense that they are all-purpose resources that are needed by everyone to freely pursue their own conception of the good life and to effectively participate in the political, economic, and social affairs of the society, such as education, health care, and economic opportunity.

The distribution of goods that are the result of following the second principle are acceptable as *just,* whatever those distributions turn out to be. This is what Rawls refers to as pure background procedural justice—the justice of the distribution of social goods is the outcome of employing the two elements of the second principle (Rawls 1971, 2001). Rawls's two principles are designed to guarantee a right to equal negative and positive liberty, basic rights of personal freedom and political self-determination, and the fair value of that liberty through fairness and equality.

1.2 Robert Nozick: A Libertarian Theory of Distributive Justice

Robert Nozick's articulation of a libertarian conception of distributive justice is grounded in Kant's idea of persons as ends. As ends (persons who possess an intrinsic value and hence are morally equal) individuals have inalienable human rights: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)" (Nozick 1974, ix). Respect for persons as ends and therefore their rights "reflect the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent" (Nozick 1974, 30-31). Persons exist as distinct individuals, with strong separate existences, "who are not resources for others" (Nozick 1974, 33).

Nozick maintains that the idea of persons as ends, an interpretation of the principle of moral equality, suggests a further principle: the principle of self-ownership. We "own" our innate and developed powers as persons. As ends each person is solely self-owning. Self-ownership in turn translates into an absolute right to the ownership of the property generated from the exercise of the individual's autonomous powers plus the basic right of freedom of exchange-transfer. In other words, each human being has basic rights to autonomy (self-ownership), property, freedom of association, and freedom to exchange and transfer one's property.

These rights represent an "entitlement theory" of distributive justice: whatever is justly acquired can be freely transferred. The fairness of the distribution of social goods is contingent, however, upon the just initial acquisition of property. If the initial acquisition is just, then a just distribution is whatever distribution results from people's free exchanges-transfers. Any distribution that arises by free transfers from a just situation is itself just: "From each as they choose, to each as they are chosen" (Nozick 1974, 160). Therefore, according to Nozick, free markets are the only just system of distribution.

This perspective maintains that the redistribution of wealth is unjust. Redistributive taxation is seen as a violation of individuals' basic rights to autonomy/self-ownership, property, and freedom of exchange and transfer, and is therefore unjust. Redistributive taxation is seen as treating individuals as means to the ends of others, thereby violating the principle of persons as ends, and the principle of respect for persons. Nozick maintains that mandated redistribution is unfair. He argues, for instance, that Rawls's second principle of justice, which guarantees the fair value of liberty, violates the principle of persons as ends. Rawls' ideas of the fair value of liberty are seen to be at their core, unfair.

However, Nozick does see a minimal role for the State, what he refers to as the "minimal State": security and enforcement of contracts are seen to be the sole legitimate function of the State. Public education, health care, and other forms of social welfare and provision are ruled out by the entitlement argument. He invokes what is known as the "Harm Principle" as the only justification for coercive interference of the State: to protect citizens from harm. The omission of basic social goods, like education, is not seen as causing harm. A more robust State according to Nozick, requires redistribution and thus violates the principle of persons as ends.

From the perspective of the elements of fairness, however, it can be argued that there are no feasible means of redressing initial unjust situations, which casts serious doubt on basing distributive justice on free markets. Furthermore, individual wealth is *not* generated by the individual alone, but through complex systems of social cooperation. If wealth is based upon social cooperation, then the individual has social "debts" to others for their individual wealth such as a defense, justice, and educational systems, infrastructure, etc. Some fair conception of redistribution would seem, it can be argued, to be justifiable.

There are also problems with conceiving social goods exclusively in terms of wealth, just acquisition and exchange; human beings differentially convert material goods depending upon their position in society and their level of vulnerability (e.g., disability). It can be argued that Nozick's Libertarianism does not acknowledge nor care for a common public good. It underestimates the need for government regulation to *protect* individuals from harm by endorsing too narrow a conception of harm and excluding the omission of basic social goods from the conception of harm.

In summary, deontological theories of distributive justice in general conceive the subject of a just distribution as the fair terms of the basic operation of social institutions that distribute the array of goods in society. They define what is just, prior to and independently of conceptions of the good, expressed by Rawls as the "priority of right" (Freeman 2007, p. 62-72). The process of determining what is right or just distribution of social goods is relational - it rests upon a conception of right relationships between citizens grounded in respect for persons and not the direct realization of social goods as subjective states of affairs. In contrast, teleological theories, to which we now turn, define, and justify distributive justice in terms of means to the direct realization of the good, or what each person values and seeks to realize in life. The means that produces the greatest and/or best realization of this good, is seen as that which is most just.

2. Teleological Theories of Distributive Justice

As discussed above, teleological theories begin with the specification of what is ultimately good or of vital interest to a decent human life. These 'ultimate goods' include what each person has reason to value and is justified in claiming as necessary to realize a good life based upon an understanding of who they are and want to be. The process of determining what is a right or just distribution is comparative: it rests upon the comparative subjective states of affairs. A just principle, rule, law, or policy is the one that generates the best realization of those valued states of affairs. Three prominent teleological theories of distributive justice will be explored: Utilitarianism, Capabilities Theory, and the Communitarian Theory of Spheres of Justice.

2.1 Utilitarianism

Utilitarianism is a theory of distributive justice originally developed by the British philosophers Jeremy Bentham, James Mill, and John Stuart Mill. It was developed further by the philosophers Henry Sidgwick and Peter Singer, among many others (Kymlicka 1990). Utilitarianism defines the good in terms of utility *and* as conscious subjective states of affairs, such as pleasure, happiness, and/or preference satisfaction. What is right or just, in turn, is defined as that which *maximizes aggregate utility.* Utilitarianism defines distributive justice in terms of the maximization of aggregative utility. It posits that what is right is the action and/or rule that maximizes the best overall consequences. It measures overall consequences by the ranking of individual utility (by some measure of utility, such as pleasure or preference satisfaction) aggregated into a total sum of utility. The highest sum-ranked, average aggregate utility, caused by the action or rule, is that which is just. The utilitarian calculation is thus based in the equal consideration of individual subjective states of affairs, their aggregation, and the aggregate's maximization.

2.2 Sen and Nussbaum: Capabilities Theory

The originators of capabilities theory are economist and philosopher Amartya Sen and philosopher Martha Nussbaum. Capabilities theory defines the good as the substantive freedom to do and to be what one has reason to value (Sen, 2009). From within a teleological perspective, Sen argues that, instead of pursuing the regulation of the distribution of social goods in terms of Rawls's (1971) two principles of justice (equal scheme of

liberties and fair equality of opportunity plus the difference principle), we should pursue the realization of capability in the population by choosing distributive policies that directly lead to meeting individuals' capability needs (substantive social opportunities necessary for their realization) on an ongoing basis. Sen (2009) maintains that the consideration of what is just should be defined as that which promotes the realization of the combined index of capabilities of members of society, as determined by open, impartial public reasoning. In other words, the situation that ranks highest in terms of the combined index should be considered the most just among comparative alternatives.

Like deontological theories, capabilities theory is grounded in the normative assertion of human dignity. The idea of justice in the presupposition of the 'inviolability and dignity of the person' as a bearer of value (Nussbaum 2000, 73). Consistent with the moral conviction of equal human dignity, Nussbaum refers to this foundation as "the principle of each person as an end" (Nussbaum 2000, 56). Morality and justice demand that we "should treat [human beings] as ends" (Nussbaum 2000, 58). Intrinsic human value *calls* for equal moral consideration. Inherent dignity bestows moral standing and consideration for each person. Respect for the dignity of persons is the foundation of justice. It exerts the moral obligation to consider the good of others, mandating the duty to "treat each of them [human beings] as ends, as sources of agency and worth in their own right, with their own plans to make and their own lives to live" (Nussbaum, 2000, p. 58).

Capabilities Theory operationalizes human dignity as the characteristics of a good human life (Snauwaert 2011). Sen and Nussbaum maintain that the consideration of justice is deeply related to the question "what it is like to be a human being?" (Sen 2009, 414). Based upon an interpretation of Aristotle's moral philosophy, Nussbaum articulates and defends this idea of dignity to include consideration of the nature of a life with dignity (Nussbaum 1990, 1995). She refers to this reflection as a 'thick vague theory of the good' (Nussbaum, 1990, 217–8). It is thick in that it posits an understanding of a "general outline or structure of the life of a human being" (Nussbaum 1990, 218), while being vague in the sense that human life is pluralistic. Following Aristotle's perspective that it is good for a being to flourish in terms of its own nature (Nussbaum 2006, 349), a good life for human beings must be first a human life (Nussbaum, 1995, p. 116): "… the search for the good activity. . . of a human being must begin with an account of characteristic human functioning . . . it had better include those activities that are essential to, definitive of, that sort of being" (Nussbaum 1995, 112)."

This perspective presents a theory of justice that proceeds from a particular conception of the good defined in terms of one's capability to do and to be what one has reason to value. From this perspective, the Kantian *principle of humanity as an end in itself* generates the "principle of each person's capability" (Nussbaum 2000, 74).

According to Nussbaum, what specifically defines our humanity is our capacity for freedom manifested in two basic capabilities: practical reason and sociability. These two capabilities are architectonic, in the sense that they organize and animate the entire structure of human life (Nussbaum 1988, 1990), for a human being is "a dignified free being who shapes his or her own life in cooperation and reciprocity with others, rather than being passively shaped" (Nussbaum 2000, 72). What is distinctive about human beings is that we are capable of freely conceiving, planning, executing, and evaluating our choices. We are capable of freedom.

Furthermore, we are, as Aristotle pointed out, by nature social, political animals. Sociability is central to our humanity (Nussbaum, 1995). Nussbaum suggests that "[t]he good of others is not just a constraint on this person's pursuit of her own good; it is a part of her good" (Nussbaum 2006, 158)." "[H]uman sociability. . . means that part of a life with human dignity is a common life with others organized so as to respect that dignity" (Nussbaum 2006, 274). A dignified life is not exclusively one wherein freedom is exercised without concern for others. The good life is a life of human affiliation wherein respect for persons as ends is affirmed as one's highest good.

Human dignity includes a consideration of the characteristics of a good human life, and central to a good life is the actualization of basic human capabilities, the realization of which constitutes a good human life. This realization, however, must be substantive in the sense that it requires the distribution of social opportunities necessary for the development and exercise of a person's capabilities.

Freedom constitutes, as Nussbaum suggests, the capability of practical reason to define and pursue one's own conception of the good life, to define and pursue what one has reason to value. Practical reason is the capacity for a conception of the good, the capability to know and decide one's own interests and ends, as well as to plan and execute the means to achieve those interests and ends. As Sen (2009, p. 236) suggests, freedom has more than an instrumental value for well-being; it has an intrinsic, constitutive value.

Freedom, however, is hollow unless there are substantive social opportunities for its exercise. As discussed above, this claim is referred to as the *fair value of liberty* (Rawls 1993). Liberty requires not merely constraint but actual social resources and opportunities for the exercise of

freedom. Substantive freedom is operationalized by Nussbaum as "combined capabilities" (Nussbaum 2011). Nussbaum identifies three kinds of capabilities: basic, internal, and combined. Basic capabilities are our innate potential powers and capacities. Internal capabilities are the developed, actualized innate powers, which comprise an internal readiness to function. Combined capabilities are substantive opportunities for the choice and exercise of the function of the internal capability. Combined capabilities entail substantive social opportunities to function. Even a highly developed internal capability can be thwarted by social conditions. For example, one may have developed the internal capability to read, however, if one is denied access to texts to read, then one's actual freedom to read is thwarted. Capability requires certain necessary and institutional conditions. In that sense combined capabilities guarantee the fair value of liberty; they empower the individual with the actual substantive freedom to define and pursue their own conception of a good life (Nussbaum 2000, 2011). One is not capable of pursuing what one has reason to value without the substantive social opportunity to exercise one's freedom. Freedom is substantive in this sense; its fair value needs to be guaranteed.

In summary, Capabilities Theory maintains that the capability to do and to be what one has reason to value, including the substantive social opportunities to exercise that choice, is the ultimate good of a dignified human life, and in turn, what constitutes distributive justice is a distribution of social goods and opportunities necessary to realize that good.

2.3 Michael Walzer: Communitarian Theory of Spheres of Justice

Michael Walzer's theory of distributive justice is defined in terms of a diverse range of independent spheres of social goods. It is an attempt to justify principles of distributive justice from within the meaning of a plurality of social goods. Walzer maintains that ethical and political philosophy proceeds intellectually by the application of an interpretative method (Walzer 1983, 1987; Walzer and Miller 2007; Orend 2000). Walzer argues that morality is neither discovered in the fabric of reality (e.g., religious ethics, natural law ethics), nor is morality invented, that is, constructed through procedural processes, such as Rawls's justice as fairness (Rawls 1971, 2000c).

Walzer argues that we do not have to discover or invent the moral world, it already exists. We are situated within it. The recognized social goods within our own communities and cultures are the ultimate source of morality; we do not need to discover or invent them; we need to interpret

them. There is no other starting point for moral deliberation; we start from where we are, reflecting on existing ethical beliefs, which entails argument and deliberation about the *meaning* of ethical goods and values. Fidelity to the deepest meaning of our most cherished values is the ethical standard of justification. As Walzer maintains: "Justice and equality can conceivably be worked out as philosophical artifacts, but a just or an egalitarian society cannot be. If such a society isn't already here – hidden, as it were, in our concepts and categories – we will never know it concretely or realize it in fact" (Walzer 1983, xiv).

Walzer's core theoretical claims are: (1) the fairness of the distribution of a social good is determined by how the meaning of the social good is culturally defined; (2) each social good constitutes an irreducible sphere of justice; (3) the invasion and domination of a social good outside its sphere constitutes injustice (for example, wealth determining the distribution of educational opportunity or health care); and (4) complex equality is a distributive concept that follows from pluralism, which posits that one's standing in one sphere of good should not determine or undermine one's standing in another sphere. Walzer's theory of justice is premised upon the insight that general social goods can only be specified within specific social contexts. The argument proceeds as follows.

The meaning and value of social goods are situated within and relative to the cultural context. He writes:

> I want to argue . . . that the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and that all these differences derive from different understandings of the social goods themselves – the inevitable product of historical and cultural particularism (Walzer 1983, 6).

For Walzer, the logic of the justice of a distribution of a social good is implicit in the culturally shared understanding of the social good. The shared meaning of the social good contains the criteria which should govern its distribution. In other words, distributive criteria are present within the shared meaning of the good. Each social good has its own distributive criteria. As Walzer states: "Social goods have social meanings, and we find our way to distribute it (justice) through an interpretation of those meanings. We search for principles internal to each distributive sphere" (Walzer 1983, 19).

Since each social good has its own shared meaning, and in turn, its own inherent distributive logic (the logic is implicit in the shared meaning), it constitutes a sphere of justice, defined by clear borders. The individual

spheres may be interlocking, but they maintain their own integrity as a sphere. They should be autonomous. "There is no single set of primary or basic goods conceivable across all moral and material worlds – or, any such set would have to be conceived in terms so abstract that they would be of little use in thinking about particular distributions" (Walzer 1983, 8).

Injustice is defined as an invasion or domination of one social good or sphere into and over another. Injustice is a morally unjustifiable invasion and domination of one good over others, in the sense that distributive injustice occurs when the possession of one social good Y, allows one to possess another good, Z, by mere possession and without regard to the meaning of the good (violation of shared meaning). For example, when quality education is contingent upon family income you have a situation where money, one sphere of good, dominates another sphere of good, education; this is what Walzer refers to as domination. Justice demands that distinct social goods not be convertible – it should resist convertibility. Justice requires the defense of differences – different goods distributed differently among different groups of people. In turn, domination is a kind of unjust aggression.

The aim of political egalitarianism is a society free from domination. However, equality is not singular for Walzer, it is complex. Complex equality describes the nature of the just distribution of social goods under the conditions of pluralism. It posits that one's standing in one sphere of good should not determine or undermine one's standing in another sphere. Equality is complex in the sense that it is differentiated in terms of a plurality of social goods. The claim is that there is no single set of social goods as all-purpose means, such as Rawls's (1971; 2001) idea of primary goods. Goods are plural and thus equality is complex. As Walzer suggests: "The argument for complex equality begins from our understanding … of the various social goods … It requires then, a diversity of distributive criteria that merits the diversity of social goods" (Walzer 1983, 18).

3. Summary of Conceptions of Justice

As we have seen, there are many reasonable theories of distributive justice, some deontological, and others teleological. The question is whether one conception of distributive justice is superior or whether an overlapping consensus can be achieved among them regarding a common set of mutually agreeable principles of distributive justice. Deontological theories of distributive justice in general conceive the subject of a just distribution as the fair terms of the basic operation of social institutions that distribute the array of goods in society. They define what is just, prior to and

independently of conceptions of the good, expressed by Rawls as the "priority of right" (Freeman 2007, p. 62-72). The process of determining what is right or just distribution of social goods rests upon a conception of right relationships between citizens grounded in respect for persons and not the direct realization of social goods as subjective states of affairs. In contrast, teleological theories, define and justify distributive justice in terms of means to the direct realization of the good. The means that produces the greatest and/or best realization of this good, is seen as that which is most just. The principle, law, policy, etc., that results in the most extensive realization of the good is seen as just.

In democratic societies there is a consensus that basic rights to a scheme of liberties (e.g., a right to freedom of conscience, speech, association, political participation, etc.) be protected. Consensus regarding principles of the fair distribution of social and economic goods is far more contentious. One possibility in the face of a lack of consensus regarding the distribution of social and economic goods is that public deliberation could proceed in terms of a method of moral pluralism, in the sense that agreement on a set of distributive principles or a combination of them could be justified based on a plurality of principles grounded in a diversity of conceptions of justice. If agreement can be reached from the perspective of several conceptions of justice, deontological and teleological, then a particular distributive approach would be justifiable and thereby legitimate. Public reason and deliberation could therefore proceed on the grounds of either shared principles *or* moral pluralism as a method of justification. In either case the specification and understanding of multiple reasonable conceptions of distributive justice is necessary for public deliberation and public reason, and thus, for the justification and legitimacy of distributive policies.

4. The Scope of Justice

The scope of justice refers to the question: how far should justice reach? Certainly, we have duties of justice to the citizens of one's nation. Are these obligations confined within the boundaries of national citizenship, or do they extend to include all human beings? Who has the duty to protect and provide for the enjoyment of those rights? If they extend to all, what rights and goods should be included? How inclusive should the moral community be? What principles, what reasons, should we appeal to in order to determine and justify the scope of justice? Two standards are discussed below: (1) the standard of common relationship, that is, "Distributive justice becomes relevant between people when they exist in a certain kind of

relationship with each other" (Armstrong 2012, 25); and (2) a cosmopolitan standard of shared humanity and universal rights.

4.1 The Common Relationship Standard

The "common relationship" standard for determining and justifying the scope of justice maintains that persons who are in some significant sense in relationship with each other have duties of distributive justice to each other. Duties of justice apply when persons potentially or actually impact each other's lives (Armstrong 2012, 25); that is, they create a public (Dewey 1954 [1927]). The "public" is formed out of the indirect consequences of associated action (Dewey 1954 [1927]). Dewey writes: "The lasting, extensive, and serious consequences of associated activity bring into existence a public (Dewey 1954 [1927], 67)." Individual actions have consequences, both direct and indirect. When an individual or group acts, the action has direct impact on the individuals most immediately affected. In many cases however, there are also significant indirect consequences. Others not directly and immediately involved are impacted (for example, individual or industrial dumping of toxic materials into streams, rivers, and lakes). The "public" is the body of individuals who are impacted by the consequences of an action. Those impacted have a *common interest* in the regulation of the consequences. A common interest is the felt need of a public to regulate the indirect consequences of the action of others, and for the individual's choices to be animated by concern for the common interest. This common interest and concern for the consequences of one's action extends not only to those nearest to one, but to the public as well.

From this perspective, the scope of the public created by the impact of interrelationship determines the reach of justice. If the public is confined to nations, then the scope of justice is national. If the public is global, then the scope of justice is global as well. This standard may be conceived in terms of institutional relationships, in the sense that the principles of justice apply to institutions and the scope of institutions determines the scope of justice.

An example of this approach is Thomas Pogge's Relational Approach to Global Distributive Justice (Pogge 1989, 2014). He argues that a shared international order exists on the global level that is imposed on people; imposed by the better-off on the worst-off. This institutional order should meet at least certain minimal conditions expressed in terms of human rights. The poverty produced by this imposed order is *avoidable* (Armstrong 2012). Therefore, there exists a negative duty of states and citizens: "… one ought not to co-operate in the imposition of a coercive institutional order that avoidably leaves human rights unfulfilled without making reasonable

efforts to aid its victims and to promote institutional reform" (Pogge cited in Armstrong 2012, 29). We must make sure that the terms of our interaction with others are at least minimally fair. The common relationships standard bases the scope of justice within the extent of interrelationships, including institutions and between peoples.

4.2 The Common Humanity and Universal Rights Standard

This standard of the scope of justice is based in the moral convictions of the equal, inherent dignity of every human being and in turn respect for persons. Our common humanity creates universal rights and duties of justice, so there exists a continuity between national and global domains, dealing with the same human being. This approach is not contingent upon empirical facts, or social and/or institutional interrelationship (Armstrong 2012). It rests upon humanity and therefore represents a justification for a universal scope of justice.

4.3 The Scope of Distributive Obligations

If the scope of justice is conceived as global, based in either of the two standards/criteria above, what should be the scope of the distributive obligation nations owe to others; what do the people of wealthy nations owe to people of poorer nations? There are two basic conceptual approaches to this question: Egalitarian v. Minimalist. The Egalitarian perspective argues that the full range of rights and duties stipulated in the various conceptions of distributive justice and human rights, should extend to all human beings. The Minimalist perspective limits obligation to guaranteeing a decent, minimally acceptable quality of life for all human beings (Armstrong 2012). For example, Rawls (1999c) stipulates a duty to assist underprivileged societies that are burdened by poverty and/or governmental failure.

The consequence of the uneven diffusion of world economic growth is the existence of widespread world poverty, extreme poverty, and inequality, leading to patterns of significant social exclusion and injustice. Fairness calls for a significant reduction of poverty ($2.50 US per day) and extreme poverty ($1.50 US per day) as practically feasible and as an urgent matter of justice. In addition, even in the most productive and wealthiest countries, such as the United States, there exists significant economic inequality interrelated with social exclusion; economic development should and can be socially inclusive. Whichever conception we employ to determine the scope of distributive obligation, egalitarian or minimalist, there is a principle of ability/capacity to pay; a principle that one's duty to support is

relative to one's capacity to provide funding. Wealthier nations should have the strongest obligation to provide funding to counter extreme poverty, at the minimum.

5. Distributive Justice and Environmental Sustainability

Sustainability refers to the preservation of the natural environment within which human beings live and require for well-being. Sustainability is forward-looking, to the long-term quality of the natural environment. To damage the environment in such a way as to reduce its long-term quality is to harm the well-being of those who inhabit the ecosystem. This damage enacts a basic form of violence; the sustainability of the natural environment is an urgent matter of justice. As the economist Jeffery Sachs suggests, sustainable development is defined in alignment with the United Nation's Sustainable Development Goals (SDGs), as "*socially inclusive and environmentally sustainable* [economic] *growth*" (Sachs 2015, 3, orignal emphasis). The realization of socially inclusive economic development, however, strongly interacts with and impacts the Earth's bio-system, and it's carrying capacity, understood in terms of planetary boundaries. The growth of economic productivity powered mainly by burning fossil fuels coupled with rapid and expansive population growth and high consumption rates among the wealthiest societies has caused unprecedented harm to the natural environment, including pollution, climate change, biogeochemical flows, biosphere integrity, ocean acidification, and biodiversity loss, among other harms. In other words, economic development is reaching, and in some cases exceeding, the Earth's planetary boundaries, the safe operating limits of the biosphere. Sustainable development is socially inclusive, social and economic development that stays within the carrying capacity of the biosphere defined in terms of its safe operating limits, its boundaries (Sachs 2015).

In identifying sustainable development as a core issue, the scope of justice is expanded to include environmental sustainability. The destruction of the carrying capacity and health of the biosphere is arguably one of the gravest forms of injustice (Sachs 2015; Snauwaert 2017; Warnke 2016). Given its fundamental value for life, environmental sustainability should therefore be considered a basic good and its benefits and burdens should be considered a matter of distributive justice (Warnke 2016). The inclusion of environmental sustainability and sustainable development expands and integrates the conception of justice to include ecological well-being in interrelationship with economic development, social inclusion, and distributive justice. Substantively, a conception of distributive justice

should consider environmental justice, including the fair distribution of the benefits and burdens of pollution, the loss of biodiversity, climate change, and the violation of planetary boundaries, among other environmental considerations (Gardiner et al. 2010; Hargrove 1996; Light and Rolston III 2003; Light and Rolston 2006; Sze and London 2008; Wenz 2001). There are at least two fundamental questions relating to environmental justice:

1. What principles should regulate the fair distribution of the benefits, burdens, and risks of policies that address environmental sustainability and the mitigation of, and adaptation to, environmental damage?
2. Based upon these principles, what normative framework of reference should inform and guide environmental policy?

Furthermore, this environmental perspective regarding distributive justice is global in scope; the issues we face often transcend the boundaries of particular communities, including nations, to form a global public (Dewey 1954 [1927]). As Sachs suggests, “There is an underpinning of ethics in all these ideas. When we talk about moving to global SDGs, we are also talking about the need for and possibility of a shared global ethics” (Sachs 2015, 508). A core part of this global ethic (along with the considerations discussed above) should be a conception of global distributive justice. Burdened societies trapped in poverty and underdevelopment need assistance to lift them out of that trap. A duty of assistance by developed nations to provide significant development assistance is apparent. Assistance speaks to what approach to global distributive justice is justifiable (Armstrong 2012). As discussed above, a “relational approach” suggests that "Distributive justice becomes relevant between people when they exist in a certain kind of relationship with each other” (Armstrong, 2015, p. 25). If we share a single world, and impact each other's lives, and further establish institutional relationships, then distributive justice is applicable in regulating the fairness of the distribution of benefits and burdens that result from our relationships. The scope of our relationships determines the scope of justice; if global, then the scope of justice should be global. A non-relational approach maintains that humans have rights simply as humans based upon innate dignity and respect for persons—our humanity creates rights and duties of justice. At minimum, either approach suggests a strong moral imperative for developmental assistance at least at a level that guarantees the social minimum of a decent life. This moral threshold would entail lifting everyone out of extreme

poverty as an urgent matter of justice as well as ensuring environmental sustainability for the current and for future generations.

Moreover, peace and environmental sustainability share the common ground of justice. Recognition of this relationship necessitates broadening conceptualizations of justice toward moral consideration of all sentient beings. This insight arguably expands moral consideration to future generations of human beings *and* to all present and future generations of sentient beings (Snauwaert 2020a). The extension of moral consideration to all sentient beings suggests the construction of a broader conception of justice. A firm basis for the establishment of moral consideration is intrinsic value, for it establishes the inviolability of moral consideration rather than resting it on the contingent grounds of instrumental value. If an individual is deemed not to have intrinsic value, then that individual cannot in principle be due moral consideration. The individual may possess value, but it is contingent upon its utility to the members of the moral community (Hargrove 1996; Light and Rolston 2006; Rolston 1986, 1988; Taylor 1986). All sentient beings can be understood to be "teleological center[s] of life;" an individual living being is a "unified system of goal-oriented activities directed toward their preservation and well-being . . . an entity whose 'world' can be viewed from the perspective of *its* life" (Taylor 1986, 79). The recognition of the intrinsic value of all sentient beings establishes their moral standing, thereby expanding the scope of justice. Expanding the scope of moral consideration to all human and non-human sentient beings invokes a requirement of fairness. All sentient beings should be treated with care and respect as ends and not merely as means. Therefore, human beings have a moral obligation to regulate their rational choices concerning other sentient beings and the natural environments that support them in terms of a consideration of the interests of all affected beings, including future generations. The consideration of sustainability therefore extends the question of intrinsic value to future generations. It can be argued that we do hold them in trust, and by doing so we acknowledge their intrinsic value and moral consideration (Snauwaert 2020a).

6. Summary

The purpose of this chapter was to explore and discuss prominent conceptions of distributive justice within national societies and beyond as they relate to questions of global justice. From within the perspective of the moral convictions of equal human dignity and respect for persons, *distributive justice* was defined as *what each person is due and what we owe others* as matters of good and right. We explored perspectives related to the

question: what is the most justifiable distribution of rights and duties and thus the most justifiable distribution of social goods? Different conceptions of distributive justice were understood to specify: (1) rights *and* duties; (2) the content of those rights in terms of the social goods to be distributed; and (3) the scope of justice. The meaning of a just and peaceful society is contingent in part upon how distributive justice is conceived. Thus, reflection upon the various approaches to and conceptions of distributive justice is foundational to the pursuit of positive peace.

Furthermore, justifiable and affirmed principles of justice, as common fair terms of social cooperation, are important tools that empower citizens and are essential for the establishment and maintenance of the sphere of peace conceived as the corridor of liberty and justice. Distributive justice is a fundamental element of a just, positive peace, for without a fair distribution of social goods and opportunities a society will be burdened by structural violence, domination, and oppression.

7. Peace Constitution Who Gets What? Basic Template

1) Summarize the basic question of justice being considered: What defines a fair distribution of social goods and rewards? If distributive equality (distribution of equal goods and rewards) is unjustifiable, and thus some fashion of distributive inequality is justifiable, then can distributive *inequality be justifiable?* What should be the Scope of distributive justice? Should distributive justice include environmental justice?
2) Alternative Principles: Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic question and choose a set of principles of justice. What principles of distributive justice are the most justifiable in terms of fairness: Rawls's two principles of justice; Libertarian right to the ownership of the property generated from the exercise of the individual's autonomous powers plus the right of freedom of exchange-transfer; Utilitarian maximization of aggregate utility as the standard of a just distribution; realization of a combined index of capabilities; distribution of goods consistent with the cultural meaning of the good and its integrity? What should be the scope of justice? Who should be the duty bearers? What principles should regulate the fair distribution of the benefits, burdens, and risks of the mitigation of and adaptation to environmental damage? Do we owe moral consideration to sentient non-human beings and to future generations of all sentient beings, including human beings?

3) Justification: Articulate a justification of choice of principles by employing the elements of fairness (equality, recognition, reciprocity, and impartiality). *From the moral point of view of fairness, are the principles justifiable?* Consider also why alternative principles are unjustifiable.
   i. Equality: Does it recognize and treat all persons as equals?
   ii. Recognition: Is it consistent with respect for persons?
   iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
   iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4) Conclusion: Summarize your choice of principles and their justification.

CHAPTER EIGHT

WHO DECIDES?

The purpose of this chapter is to explore the question of *Who Decides?*, a basic question of how political power should be distributed among citizens, as well as on what basis political power is justifiable and legitimate. From within the moral point of view of the elements of fairness the recognition of reciprocal equality suggests that there is no person with authority that is morally superior to any other person. From this perspective, no one is inherently superior in value to any other. This moral equality suggests that no one can claim political power/authority without consent of all affected others, and in terms of reciprocity, deny the same claim to power to others; that is, there is valid reason to reject non-consensual claims of power. Political power is therefore derived from consent. Furthermore, if power is delegated, it must be representative. In terms of impartiality, claims of political power/authority must be to the benefit of others not merely for one's own self-interest. These are the basic requirments and tests of justifiable answers to the basic question of justice of Who Decides: What kind of political system is consistent with fairness? What constitutes a fair distribution of political power?

For most of the history of justice in the West there has existed the assumption that the social order was fixed by nature and that considerations of justice were confined within the view of a fixed hierarchical social terrain (Johnston 2011). However, the emergence of the idea of democracy and with it a democratic conception of justice, assumes that the basic structure of society, including social institutions, is *not* fixed by nature, but is open to human choice and thereby human assessment (Johnston 2011). Human beings are capable of exercising "constitutional choice." In the *Declaration of Independence* Thomas Jefferson, for example, maintains that "whenever any form of government becomes destructive of these ends [life, liberty, and happiness], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its power in such form as to them shall seem most likely to affect their Safety and Happiness" (Jefferson 2021 [1776]). In keeping with this right, the opening paragraph of *The Federalist Papers* begins with Alexander Hamilton questioning "whether societies of men are really capable or not of establishing good government from reflection and choice,

or whether they are forever destined to depend for their political constitutions on accident and force" (Hamilton, Jay, and Madison 2021 [1787] Federalist No. 1, Paragraph 1)? Implicit in both quotations above is the possibility of "constitutional choice," the principle that human beings can exercise choice in creating systems of government.

As implied in the Jefferson quotation, constitutional choice entails the articulation of principles of justice that are consistent with ethical values, from which the design features of governmental structures are derived. Constitutional choice also applies equally to the modification of an already existing form, as was the case with the framing of the American Constitution, a modification of the Articles of Confederation. In addition, constitutional choice is not restricted to the establishment and assessment of national governments, but it also applies to all institutions of human governance. From this perspective, it can be asserted that it is possible for the principles of justice that are the foundation of the constitution, the unwritten constitution, to be a matter of choice and consent.

1. The Coercive Power of Government

Government is based upon the possession of coercive power, as officials of the government have the power to determine and enact laws. Governments claim monopoly control over the means of force to maintain social order through the enforcement of their laws. On what basis can this coercive power be justified? One answer is the maintenance of social order. Thomas Hobbes famously argued that the concentration of autocratic power in a single entity, the *Leviathan*, is the only condition capable of guaranteeing compliance to the law, providing mutual assurance among citizens, and thus social order (Hobbes 2008). Hobbes argued that establishing social order requires an authoritative, coercive power that can guarantee order through the exercise of political power, including force. According to Hobbes, huuman beings form organized societies in order to be protected from aggresive competition between isolated individuals that exist outside the framework of societies ruled by a sovereign power; what he referred to as living within a 'state of nature' (Hobbes 2008). Life in the state of nature is "nasty, brutish, and short". He asserts that people dwelling outside of organized societies necessarily live in anarchy and conditions of perpetual war. However, as Hobbes suggests, war "consisteth not in actual fighting; but in the known disposition there to, during all the time there is no assurance to the contrary" (cited in Acemoglu and Robinson 2019, 9). War is a condition of a lawless anarchy and it emerges when "men live without a common power to keep them all in awe" (Hobbes cited in

Acemoglu and Robinson 2019, 10).

In this view, security of persons, and the better life that it affords, compels individuals to enter into a social contract with a State that possesses centralized, coercive power: the "Leviathan." The coercive centralized power and authority of a government is understood to be the only condition capable of guaranteeing compliance to the law, thus providing mutual assurance among citizens that all will be compliant and social order will be maintained. In Hobbes's view, establishing trust and thereby compliance to the law and social order requires that citizens necessarily contract with an authoritative, coercive power that can guarantee social order through force. According to Hobbes, the goal of state power is "the conservation of peace and justice… the end for which all common-wealths are instituted" (Acemoglu and Robinson 2019, 11). From this perspective, social order and therefore the possibility of peace and justice, requires a Leviathan, a state with coercive power to control and order society.

Hobbes offers the definitive understanding of the modern state as institutionalized coercive power: the modern state establishes the rule of law and enacts laws *while claiming* monopoly control over the means of enforcement of its laws. Given this fundamental coercive dimension, it is often suggested that power involves solely a command-obedience relationship. This assumption is grounded in the traditional view that the essence of power is the capacity to command, by the threat or actual deployment of force, the obedience of others. The command theory equates political power with the organization of coercive force; from this perspective, political power is contingent upon one's capacity to project force, for in open conflict an opposing power can only be controlled or destroyed by overwhelming physical force. As Mao asserted "Power is found at the end of a bayonet." Militarism is a manifestation of a command conception of power; the continual organization of the means of force is the very foundation of political power. If political power is conceived in terms of command-obedience, then autocracy, the creation and maintenance of a dominant system of control, logically follows; this logic of command power dates to the ancient historian Thucydides: "The strong do what they will, the weak accept what they must" (Thucydides 1972, Chapter 17).

The continual organization of the means of force is the very foundation of political power. Through its coercive power, the state is able to adjudicate conflict, guarantee security and social order, and provide for the distribution of social welfare (Acemoglu and Robinson 2019). However, while the power and authority of the state is a necessary condition for an ordered society, and thus for peace and justice, unchecked coercive power leads to the threat of domination, oppression, structural and cultural violence, and

thus injustice (Acemoglu and Robinson 2019). Because the state embodies institutionalized coercive power, "Despotism is the DNA of the state" (Acemoglu and Robinson 2019, 70). The state itself, being controlled by a set of political elite agents, is subject to and driven by the will to power. Is a concentration of coercive power in the possession of a political elite unaccountable to the people morally justifiable?

2. Democracy and Political Legitimacy

The above discussion of the coercive power of the government points toward the first question of politics: "What confers authority on government (Grayling 2018, 50)?" In other words, what constitutes justifiable and legitimate political power? How can the exercise of coercive power be justified as fair and thus legitimate? This is the question of political legitimacy (Rawls 1993, 1997). From this perspective, power is the first question of justice (Forst 2013a, 2014b).

Historically, coercive power has been grounded in and justified by some attribute (divine right, strength, knowledge, wealth, etc.) that is only possessed by an elite, for example: rule by divine right of a monarchy; rule of the strong in the form of rule by warriors; rule of the society by those who possess elite knowledge, who know the truth (e.g., Plato's philosopher Kings and Queens); rule by those who have the most wealth; rule by hierarchical kinship networks that enforce a system of customs, traditions, rituals, and patterns of acceptable and expected behavior; or rule through a Hobbesian social contract with a Levithan.

From the moral point of view of fairness, it can be argued that grounding the legitimacy of coercive power in the attributes of a political elite violates the recognition of equality by maintaining that certains persons are morally superior to other persons, and thus should have decision-making power. In terms of reciprocity, autocrats in principle claim power while denying their citizens' claims to power, and assert that others have no grounds to reject their claims to exclusive power. In terms of impartiality, claims of political power/authority must be to the benefit of others and not merely for one's own self-interest. Coercive power tends to be claimed out of self-interest. From the point of view of fairness these claims to power are *morally arbitrary,* based as they are in the arbitrary attributes of leaders (Forst 2017).

From the moral point of view of fairness, political legitimacy is attained by avoiding structures and practices of *arbitrary* power (Forst 2017). The basic idea of democracy is that the foundational structures, distributions, and enactments of power are such that no reasonable citizen would have grounds to reject them (Forst 2017; Rawls 1993; Scanlon 1998). In this

sense the people are the source *and* agents of legitimate political power and authority. The legitimacy of political authority is contingent upon the acceptance of the normative justifiability of the law by citizens (Habermas 1996; Rawls 1971, 2005, 2001).

As the political philosopher Jürgen Habermas suggests: "The claim of legitimacy on the part of a legal order built on rights can be redeemed only through the socially integrative force of the 'concurring and united will of all' free and equal citizens" (Habermas 1996, 32). Furthermore, "The positivity of the law is bound up with the promise that democratic processes of lawmaking justify the presumption that enacted norms are rationally acceptable" (Habermas 1996, 33). From the point of view of free and equal persons, power should be structured and distributed in terms of the consent of the people. It is the people who should decide. When power is exercised without the consent of those subjected to it, thereby being imposed, it is morally arbitrary and thus unjustifiable (Forst 2017). The basic moral constraint on power, upon which its legitimacy is dependent, is whether it is justifiable to all those affected by it. Consent means that the people freely affirm the founding values and principles of the government as well as the laws and policies the government legislates *in light of* those values and principles (Rawls 1971, 1993, 1997, 2001). Such consent renders the coercive power of government justifiable and legitimate.

Furthermore, as discussed earlier, respect for persons demands that each person has a *basic right to justification*, to be offered reasons of justification for the social and political rules and institutions to which they are subjected (Forst 2012). This right provides a moral ground for consensual power, which in turn provides a rational basis for the legitimacy of a democratic structure and distribution of power. Just and legitimate political authority is based upon the right of justification and a correlate duty to offer justification to others, as fundamental matters of respect. As free and equal, citizens have a basic right to ask for reasons of justification and to question those reasons, a right not be subjected to norms and practices that reasonable persons would have grounds to reject (Rawls 1971; Scanlon 1998). As Rawls maintains: "Citizens are equal in that they regard one another as having an equal right to determine, and to assess upon due reflection, the first principles of justice by which the basic structure of their society is to be governed" (Rawls 1999b, 309).

From this perspective, it can be argued that respect for persons and thus recognition as an equal is the condition of non-domination, i.e., not being forced to comply to demands and practices that are unjustifiable; that one has reason to reject. In turn, if you deserve valid justifications for the norms and practices you are subject to, justifications that are based upon sharable

reasons, then so does everyone. To be subjected to norms and practices that do not have valid justification is to suffer domination, and domination in turn lays the ground for various types of oppression. From this perspective, political justice is the practice of justification, and persons should be active agents, and not mere recipients, of justice (Forst 2012). The exercise of coercive power by the state should only be employed in ways that all citizens may reasonably be expected to endorse or have no reason to reject (Rawls 2001). As John Rawls suggests:

> A legitimate regime is such that its political and social institutions are justifiable to all citizens – to each and every one – by addressing their reason, theoretical and practical. Again: a justification of the institutions of the social world must be, in principle, available to everyone, and so justifiable to all who live under them. The legitimacy of a liberal regime depends on such a justification (Rawls 2007, 13).

In other words, *valid justification, rather than coercive force, is the source of political legitimacy in a democracy.*

Therefore, the first task of political justice is to make possible the construction of a basic structure of justification (Forst 2012). This structure of justification provides the foundational validity and legitimacy of constitutional and legal principles which form and organize the core structures of society. Political justice establishes the foundation of a just constitutional regime (Rawls 2001). Given that the constitutional structure of the society forms the basis of the coercive power of the government, it must itself be morally justifiable; it must achieve validity in terms of its consistency with the criteria of fairness. It should be capable of realizing mutual agreement and affirmation under fair conditions. No reasonable citizen should have reason to reject the constitutional structure (Forst 2017; Rawls 2001).

In addition to a basic right to justification the enactment of a basic structure of justification requires a system of rights to basic political liberties, akin to what is established as a Bill of Rights in the amendments to the US constitution (Amar 1998). Basic rights to political liberties undergird the right to justification, the fundamental right to self-government. This scheme of rights includes rights to equal suffrage, to serve on juries, freedom of conscience, freedom of speech, freedom of association, freedom of the press, freedom to dissent, freedom to petition the government, due process, etc. This scheme of rights constitutes a structure of justice necessary to support the right to justification and thus legitimate democratic government by consent of the people.

This conception of political authority as grounded in the consent of the people is more fundamental than, yet complementary to, the establishment of a Madisonian constitutional architecture of checks and balances. The design of the US constitution by the Federalists, chief among them Alexander Hamilton and James Madison (Hamilton, Jay, and Madison 2021 [1787]), is an example of an approach to balancing power within the institutional and constitutional structure of the state. This is an architecture that constitutionally divides power veritically among various jurisdictions (city, county, state and federal) and among independent branches of government (legislative, executive and judicial). As Madison stated: "*Divide et impera* [divide and rule]. Here, the reprobated axiom of tyranny is under certain qualifications, and is felt to be the only policy by which a republic can be administered on just principles" (cited in Acemoglu and Robinson 2019, 48).

However, a constitutional system of divided power alone is insufficient to curb the autocratic power of the government. As Thomas Jefferson suggests: "What country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance" (cited in Acemoglu and Robinson 2019, 50)? Jefferson was suggesting that an informed citizenry is needed to control, regulate, and condition the coercive power of the state, for "to secure [the people's] Rights governments are instituted among men, deriving their just powers from the consent of the governed" (Jefferson 2021 [1776]). As Acemoglu and Robinson suggest:

> Despotism flows from the inability of society to influence the state's policies and actions. Though a constituion may specify democratic elections or consultation, such a decree is insufficient to make the Leviathan responsive, accountable, and shackled unless society is mobilized and becomes actively engaged in politics (p. 50).

The constitutional history of the United States bears out this need for citizen's rights to be protected as a central purpose of government, *as well as* state power being grounded in the consent of the governed. The ratification of the US constitution, the system of divided power advocated by the Federalists, was made contingent, through public political pressure, upon a series of amendments to the constitution that guaranteed a set of rights - the Bill of Rights - that empowered the citizenry; protecting their liberty in the face of a powerful centralized state (Amar 1998, 2005). The public must recognize itself in order to articulate and express its interests (Dewey 1927). If the State is to protect the common good and not be merely a handmaiden of elite private interests, it must be informed by the public. It

is on the basis of an informed, energetic, and articulate public that the State serves its proper function, without which it becomes a political means for the pursuit of exclusive, elite private interests. The State will pursue the interests of the powerful if the public remains unorganized and unarticulated (Dewey 1927; Acemoglu and Robinson 2019).

Democracy is therefore grounded in a consensual theory of power. The consensual theory of power understands power as a collective act grounded in consensual agreement (Arendt 1970; Sharp 1973). As Hannah Arendt suggests: "Power is indeed the essence of all government but violence is not. Violence is by nature instrumental... power... is an end in itself" (Arendt 1970, 51). Power requires legitimacy, derived from consent, and, therefore, power can never grow out of violence. Power is the ability to act in concert, and such action is grounded in consensual agreement. Therefore, "[p]ower is never the property of an individual; it belongs to a group and remains in existence only so long as the group keeps together" (Arendt 1970, 44). The consensual nature of power is revealed "[w]hen commands are no longer obeyed, the means of violence are of no use; and the question of this obedience is not decided by the command-obedience relation but by opinion, and of course, by the number with those who share it. Everything depends on the power behind the violence ..." (Arendt 1970, 49). Power is the opposite of violent force; it is created by free, uncoerced consent, not by the threat or use of force.

Power also arises from diverse social sources, based in the cooperation of multiple institutions and people. Political power depends on the cooperation of the people; it is therefore pluralistic and fragile. In turn, power is contingent upon the acceptance of political, as well as ethical and moral, legitimacy. "Thus, political power is not a static given quantum—power varies and is contingent" (Sharp 1973, 15). Power is always one of mutual influence and interaction—it is "mutually determined action" (Sharp 1973, 16).

The idea of the consensual nature of power is illustrated in the theory of nonviolent action as "based on the view that political power can most efficiently be controlled *at its sources"* (Sharp 1973, 10), "the belief that the exercise of power depends on the consent of the ruled who, by withdrawing that consent, can control and even destroy the power of the opponent" (Sharp 1973, 4). Consensual power is diffuse and, being based upon consent, legitimate power is always socially and politically *inclusive*. When it is acknowledged that legitimate power is consensual, democratic structures of public deliberation and consent can be established, protected, and expanded within and across societies.

3. Threats to Democracy

There exist several threats to democracy that constitute possible unfavorable conditions for its sustainability and stability over time. This is especially true when there is a convergence of two or more of these threats (Mettler and Lieberman 2020). In addition to the oppressive structures and ideologies of racism and patriarchy discussed earlier as both structurally and culturally violent, and thus incompatible with democracy, further potent threats to democracy include: political polarization; undermining of institutions and democratic norms and principles; irrationality; disinformation and post-truth; militarism; "coups from within" and the complicity of elites; political violence and intimidation; lack of democratic education; and economic inequality. (Ben-Ghiat 2020; Diamond 2019; Gessen 2020; Hett 2018; Frum 2018; Kakutani 2018; Levitsky and Ziblatt 2018; Mettler and Lieberman 2020; Paxton 2004; Snyder 2017, 2018; Stanley 2018; Sunstein 2018; Nance 2018; Müller 2021). While all these threats are important to consider, in keeping with the central concern of this book on moral reasoning and judgment and its development, the focus here will be on the threats of irrationality, polarization, disinformation, and the resulting subversion of democratic norms.

3.1 Irrationality and the Banality of Evil

It has long been recognized that rational and reasonable citizens are a necessary condition for democracy, and thereby for peace and justice (Chomsky and Otero 2002; Dahl 2000; Dewey 1916; Freire 1998; Rawls 1993; Scheffler 1981; Sen 2002; Gutmann 1999). The fertile soil of authoritarianism is a potent threat to democracy and justice, as it usually fosters irrationality and anti-intellectualism among citizens (Gessen 2020; Hett 2018; Paxton 2004; Stanley 2018). A case in point is the rise of fascism in Germany and Italy after World War I (1920s-1930s) as a hostile anti-democratic movement. As the historian Robert Paxton suggests, "Fascist movements could never grow without the help of ordinary people" (Paxton 2004, 13); in fact, fascism rests upon populism—its political base is the mass of ordinary people. As a political ideology and movement, it appeals, however, not to the reason of citizens, but to their emotions. "It does not rest explicitly upon an elaborate philosophical system," but upon the emotions (Paxton 2004, 16). It appeals to the "warmth of belonging to a race… fully aware of its identity:" "gratification of submerging one's self in… shared feelings… and the group's good;" "the thrill of domination" including through acts of violence; the feeling of social crisis; the feeling of being a

victim; grievance; feelings of social decline, including the feeling of contamination and impurity; longing for a strong authoritative leader; instinctive feeling that that leader's instincts convey the truth over reason; a passionate nationalism; an aesthetic sense of the beauty of violence; fear; etc. (Paxton 2004, 17, 41). These constitute "mobilizing passions" that support and feed the rise of fascism. Based upon this irrationality, as the historian Benjamin Carter Hett demonstrates: "millions of Germans retreated into conspiracy theories" (Hett 2018, 13): "millions of its people deeply believed things that were verifiably untrue" (Hett 2018, 30).

The nature and danger of irrationality is illustrated by the case of Adolf Eichmann (Snauwaert 2009), as interpreted by the philosopher Hannah Arendt in her important book *Eichmann in Jerusalem* (Arendt 1994). Eichmann was a German-Austrian officer in the Nazi SS (*Schutzstaffel*—a major paramilitary organization of the Nazi party and government); he was one of the major organizers of the Holocaust tasked with facilitating and managing the logistics of the mass deportation of Jews and others to the ghettos and extermination camps during World War II. Eichmann fled to Argentina after the war and was finally captured by secret service agents of the Israeli government (Mossad) in Argentina; he was brought to trial in Jerusalem. He was found guilty of crimes against the Jewish people and executed in 1962. Hannah Arendt covered the trial as a reporter for the New Yorker magazine, the reporting of which became the book *Eichmann in Jerusalem.*

Based upon her observations Arendt characterizes Eichmann in terms of the concept of the "banality of evil." On one level the banality of evil refers to the disproportion between the evil done and its underlying motives. In the case of Eichmann, Arendt observes that he was quite "normal," in the sense of not being pathologically insane, nor driven by a fanatical adherence to an ideology, anti-Semitism and/or a political worldview. He was primarily motivated by concerns for career advancement. She writes:

> Half a dozen psychiatrists had certified him as normal. "More normal, at any rate, than I am after having examined him," one of them was said to have exclaimed, while another had found that his whole psychological outlook, his attitude toward his wife and children, mother and father, brothers, sisters, and friends, was "not only normal but most desirable"- and finally the minister who had paid regular visits to him in prison after the Supreme Court had finished hearing his appeal reassured everybody by declaring Eichmann to be "a man with very positive ideas." Behind the comedy of the soul experts lay the hard fact that his was obviously no case of moral let alone legal insanity (Arendt 1994, 25-26).

> Worse, his was obviously also no case of insane hatred of Jews, of fanatical anti-Semitism or indoctrination of any kind. He personally never had anything whatever against Jews; on the contrary, he had plenty of "private reasons" for not being a Jew hater (Arendt 1994, 25-26).

> He had no time and less desire to be properly informed, he did not even know the Party program, he never read *Mein Kampf*. Kaltenbrunner had said to him: Why not join the S.S.? And he had replied, why not? That was how it had happened, and that was about all there was to it (Arendt 1994, 33). Despite all the efforts of the prosecution, everybody could see that this man was not a "monster"... (Arendt 1994, 49).

On a deeper level, however, the banality of evil refers to an extraordinary shallowness, a fundamental incapacity to think and to judge, an inability to take another's point of view, and a profound lack of awareness of self and reality. Arendt observes:

> The longer one listened to him, the more obvious it became that his inability to speak was closely connected with an inability to think, namely, to think from the standpoint of somebody else (Arendt 1994, p. 49).

> Except for an extraordinary diligence in looking out for his personal advancement, he had no motives at all. And this diligence in itself was in no way criminal; he certainly would never have murdered his superior in order to inherit his post. He merely, to put the matter colloquially, never realized what he was doing... He was not stupid. It was sheer thoughtlessness-something by no means identical with stupidity-that predisposed him to become one of the greatest criminals of that period (Arendt 1994, 287-288).

Given the profound inability to think and to judge independently, the individual relies upon the conventions of the social environment for direction. This often takes the form of strict obedience to authority, as well as a strong tendency to be a joiner, to attempt to fit into the prevailing social norms, whatever they may be. In other words, a profound tendency to conform, entailing an inability to dissent, is pervasive. Arendt writes:

> Before Eichmann entered the Party and the S.S., he had proved that he was a joiner, and May 8, 1945, the official date of Germany's defeat, was significant for him mainly because it then dawned upon him that thenceforward he would have to live without being a member of something or other. "I sensed I would have to live a leaderless and difficult individual life, I would receive no directives from anybody, no orders and commands would any longer be issued to me, no pertinent ordinances would be there to consult-in brief, a life never known before lay before me (Arendt 1994, 32).

> What he failed to point out in court was that in this "period of crimes legalized by the state," as he himself now called it, he had not simply dismissed the Kantian formula as no longer applicable, he had distorted it to read: Act as if the principle of your actions were the same as that of the legislator or of the law of the land-or, in Hans Frank's formulation of "the categorical imperative in the Third Reich," which Eichmann might have known: "Act in such a way that the Führer, if he knew your action, would approve it" Kant, to be sure, had never intended to say anything of the sort; on the contrary, to him every man was a legislator the moment he started to act: by using his "practical reason" man found the principles that could and should be the principles of law (Arendt 1994, 136).

For Arendt, this lack of judgment and moral responsiveness is the fundamental evil. Arendt conceives "thinking" as a soundless, internal dialogue. Thinking is a dialogue with oneself. In this sense thought has a two-in-one structure: the subject and object of thought. Thinking is thus a reflective activity wherein one stops and steps back *within* oneself to reflect upon and discern the justifiability and value of what one is thinking (Arendt 1971; Arendt and Kohn 2003). Implicit in the two-in-one structure of thought is the test of internal consistency. In alignment with Kant's ethical theory and the conception of moral reasoning put forth in this book, a justifiable judgment is one that achieves internal consistency or reflective coherence between one's affirmed and justifiable principles and values and one's judgments.

Disequilibrium or incoherence signals that one's judgments are problematic (Rawls 1971, 2001; Scanlon 2002). Socrates states metaphorically: "it would be better for me that my lyre or a chorus I direct were out of tune and loud with discord, and that most men should not agree with me and contradict me, rather than that I, being one, should be out of tune with myself and contradict myself" (cited in Arendt and Kohn 2003, 97, Plato's Gorgias 482b-c). This statement is a metaphor for the internal consistency as a test of the justifiability of one's judgments. The process of "thinking" is therefore intimately related to moral judgment, for it defines the parameters of justifiability and thus what judgments one can legitimately endorse. Arendt writes:

> If he is a thinking being, rooted in his thoughts and remembrances, and hence knowing that he has to live with himself, there will be limits to what he can permit himself to do, and these limits will not be imposed on him from the outside, but will be self-set... extreme evil is possible only where these self-grown roots, which automatically limit the possibilities, are entirely absent. They are absent where men skid only over the surface of events, where they permit themselves to be carried away (Arendt and Kohn 2003, 101).

The fact of it being widespread, perpetuated by certain kinds of socio-political systems, is the greatest moral danger of modernity. The banality of evil is the incapacity to judge right from wrong, an inability to morally respond to others, an inability to take the other's point of view, the lack of self-awareness and personal authenticity. Given the profound inability to think and to judge independently, Eichmann relied upon his banal passions and the dictates of authority rather than a capacity for reason and judgment.

3.2 Identity-Based Political Polarization

Furthermore, as discussed in Chapter 5, human beings have a strong tendency to view the social world in terms of a differentiation between in-group bias and out-group hostility, a tendency toward tribalism. This differentiation also tends to be grounded in emotion, attachment to one's group and fear and anxiety toward others. Both group inclusion and differentiation are driven by *thymos,* the fundamental desire to be recognized (Fukuyama 1992, 2018). When driven by *megalothymia,* the desire to be different from and superior to others, differentiation results in in-group bias (favoritism) and out-group hostility (Henri Tajfel 1970; Henri Tajfel et al. 1971), a tendency toward tribalism and, when unchecked by moral reasoning and shared reasonable principles of justice and ethical values, political polarization.

A significant threat to democracy therefore is identity-based political polarization (Mettler and Lieberman 2020). Political polarization, exacerbated by exclusion and social status hierarchies, is a significant threat to democracy and thereby the power of society and the effectiveness of the State to justly regulate the social order. Political polarization occurs when individual social group identities are sorted *and* aligned with a political party or faction. Self-worth becomes linked to and contingent upon one's political faction winning. Under this condition partisan victory becomes the sole priority, to the neglect of social cooperation to achieve the common good (Mason 2018). Furthermore, the alignment of identity with politics can be exacerbated by historical, formative and/or original exclusions from equal political membership; exclusion based on race, gender, social class, religion, political ideological and party, or ethnicity serve to tether citizenship with identity characteristics. This alignment fortifies social status and in turn political hierarchies (Mason 2018).

Political polarization undermines the moral and political power of the people relative to the State (Ben-Ghiat 2020; Diamond 2019; Gessen 2020; Hett 2018; Levitsky and Ziblatt 2018; Mettler and Lieberman 2020; Paxton 2004; Stanley 2018). In-group victory, to prevail over the out-group,

becomes the sole priority, leading to the decline of the legitimacy of the opposition and often disdain for the opposition. Civil discourse and reasonable public deliberation break down into divisive rhetoric. The potential of cooperation, reasonable disagreement, compromise, and toleration sharply decline. Even when there exists significant policy agreement, identity-based political polarization prevails. The result is anger-driven political activism instead of reason-driven participation (Mason 2018). Polarization leads to increased centralization of executive power and the capture of the state by elite interests, weakening the rule of law, constitutional checks and balances, and democratic norms and procedures. The struggle over power predominates over concern for the common good and sound public policy.

Moreover, political leaders with authoritarian tendencies often attempt to weaponize polarization by encouraging and promoting the alignment of identity with politics (Mettler and Lieberman 2020). For example, the Nazi political strategist Carl Schmitt defined "the political" as the eternal propensity of human collectivities to identify each other as "enemies" (Schmitt [1932] 2007). From this perspective, the most basic political concept is the friend/enemy distinction. In 1994 the American politician Newt Gingrich crafted a memo to Republicans articulating a strategy for the use of language: in describing Democrats he argued that Republicans should use highly pejorative words, such as, betray, bizarre, decay, destroy, devour, greed, lie, pathetic, radical, selfish, shame, sick, steal, and traitors, among other negative descriptors. The construction of the friend/enemy political polarization significantly impedes political solidarity and with it the possibility of reasonable disagreement and the existence of a loyal opposition (Mason 2018).

Polarization invites the emotionally driven, passionate mobilization of *nationalism*, the belief in and emotional attachment to one's tribe, often identified in terms of race, ethnicity, or religious belief, including a belief in and attachment to a glorious mythical past/golden age and the fear and anxiety, as well as feelings of victimhood, regarding the polluting and corrupting influence of alien outsiders (Paxton 2004; Stanley 2018). As philosopher Jason Stanley put it: "The exploitation of the feeling of victimization by dominant groups at the prospect of sharing citizenship and power with minorities is a universal element of contemporary international fascist politics" (Stanley 2018, 95). In turn, "fascist nationalism is a repudiation of the liberal democratic ideal: it is nationalism in the service of domination …" (Stanley 2018, 97).

3.3 Post-Truth and the Anti-Democratic Weaponization of Irrationality

As discussed in Chapter 6 on the question of whose truth and the constitution of knowledge, those who seek to concentrate and consolidate political power attempt to control political deliberation and public opinion by trafficking in propaganda. It is an attempt to weaponize the tendency toward tribalism, the burdens of judgment, error, and bias. Cognitive bias, as well as the fallibility of reason (burdens of judgment), make us susceptible to manipulation and exploitation through propaganda; this is especially true when we are told what we want to hear. For example, in his book *Mein Kampf* (*My Struggle*) Hitler referred to the people as possessing a "primitive simplicity of their minds", and therefore, any political message to them had to be simple and emotional (Hett 2018, 38-40). Political pronouncements to the people, propaganda, "received a significant boost from the cult of irrationality that drove their followers: the contempt for, indeed the revolution against, Enlightenment standards of rationality …. a revolution against reason" (Hett 2018, 194). In other words, "Fascist politics replaces reasoned debate with fear and anger …" (Stanley 2018, 57), which further generates an emotional sense of loss and mistrust.

Furthermore, the delegitimization of the method of science and the constitution of knowledge is a prominent feature of propaganda. There is a concerted effort to delegitimize institutions that promote and sustain independent thought, such as universities and the free press, which undermines the value of critical scrutiny as the means to settle truth. This attack on truth and its institutions leads to the delegitimization of valid moral, legal, and epistemological norms. This normative delegitimization degrades and debases public deliberation (Frum 2018; Levitsky and Ziblatt 2018; McIntyre 2018; Snyder 2018; Stanley 2018).

The effectiveness of the weaponization of bias is strengthened by the idea of "post-truth". Post-truth is "a conviction that facts can always be shaded, selected, and presented within a political context that favors one interpretation of truth over another." So-called "alternative facts" (McIntyre 2018). It is the position of accepting only those facts that justify and/or cohere with one's ideology and rejecting those that are not. One's affirmed ideology becomes the basis for the determination of what is truth, and not the process of public critical scrutiny.

Propaganda is a means to exploit and strengthen an ideology. It demonstrates that one has authority over the truth itself. "At its core, propaganda is a set of communication strategies designed to sow confusion and uncertainty, discourage critical thinking, and persuade people that

reality is what the leader says it is" (Ben-Ghiat 2020). The purpose is not merely to deceive, but to rule; not to communicate information but to get us to "pick a team." It is a further means to political polarization to undermine the possibility of rational discourse among citizens, including reasonable disagreement. As the world chess champion and Russian dissident Garry Kasparov suggests, "the point of modern propaganda isn't only to misinform or push an agenda. It is to exhaust your critical thinking, to annihilate truth" (cited in Kakutani 2018, 143). As the historian Timothy Snyder noted: "Post-truth is pre-fascism." Sowing confusion, doubt, and division is foundational to the establishment of political authoritarianism (Snyder 2017, 68). Truth is the basis of democracy and "truth decay" is a potent threat to democracy (Kakutani 2018; Gessen 2020). As Hannah Arendt put it:

> The ideal subject of totalitarian rule is not the convinced Nazi or the convinced communist, but people for whom the distinction between fact and fiction (i.e., the reality of experience) and the distinction between true and false (i.e., the standards of thought) no longer exist … (cited in Kakutani 2018, 11)

Democracy and justice are contingent upon a citizenry that can embrace the exercise of moral reason and judgment in the face of strong tendencies to the passionate mobilization of tribal identity, fear of the other, and efforts to undermine the possibility of a shared reality.

4. Summary

In summary, from within the moral point of view of the elements of fairness the recognition of reciprocal equality suggests that there is no person with authority that is morally superior to any other person. From this perspective, no one is inherently of superior value to others. This moral equality suggests further that no one can claim political power/authority and in terms of reciprocity deny the same claim to others, and furthermore, others can reasonably reject others' non-consensual claims of power. Political power is therefore derived from consent. In terms of impartiality, claims of political power/authority must be to the benefit of others not merely for one's own self-interest. In answer to the basic question of justice, Who Decides?, it can be argued that fairness requires a democratic political system wherein decision-making power is derived from the consent of the people grounded in their basic rights to self-determination and justification. In turn, democracy is threatened in a number of ways, in particular the irrationality of the people and the lack of moral reasoning capacity, political

polariztion, and the weaponization of post-truth. Democracy is contingent upon a citizenry capable of exercising moral reason and judgment despite tendencies toward tribal identity, fear of the other, and the weaponization of fear and irrationality.

5. Peace Constitution Basic Template: Who Decides?

1) Summarize the basic question of justice being considered: What constitutes a fair distribution of political power? On what basis is the coercive power of government justifiable and thus politically legitimate?
2) Alternative Principles: Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic question and choose a set of principles of justice. Is democracy—government by consent grounded in a basic right to individual self-determination/positive liberty—more justifiable than autocracy? does irrationality and its manifestations of polarization, disinformation, and subversion of norms, pose a threat to democracy? Can the spread of democracy support a peaceful and just international and/or global society?
3) Justification: Articulate a justification of choice of principles by employing the elements of fairness (equality, recognition, reciprocity, and impartiality). From the moral point of view of fairness, is democracy or authoritarianism more justifiable? Consider also why alternative principles are unjustifiable.
    i. Equality: Does it recognize and treat all persons as equals?
    ii. Recognition: Is it consistent with respect for persons?
    iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
    iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4) Conclusion: Summarize your choice of principles and their justification.

CHAPTER NINE

PRINCIPLES OF CORRECTIVE JUSTICE AND RESISTANCE TO INJUSTICE

The purpose of this chapter is to explore the basic question of justice *Whose Resistance?* Is there a right and duty to resist and redress injustice? If so, what principles of corrective justice should guide that resistance? In that sense, the subject of the inquiry is to explore principles of *corrective justice* (Mills 2016, 2018). Corrective justice is understood as *nonideal* theory in contrast with the ideal principles of justice that we have explored thus far in this book. The view taken here is that nonideal theory is situated within an ideal theory of justice, for injustice can only be determined from within the parameters of an ideal theory of justice. As John Rawls clearly delineated:

> The intuitive idea is to split the theory of justice into two parts. The first or ideal part… works out the principles that characterize a well-ordered society … It develops the conception of a perfectly just basic structure… Nonideal theory, the second part, is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions. This division of the theory has, as I have indicated, two rather different subparts. One consists of the principles for governing adjustments to natural limitations and historical contingencies, and the other of principles for meeting injustice.
>
> Viewing the theory of justice as a whole, the ideal part presents a conception of a just society that we are to achieve if we can. Existing institutions are to be judged in the light of this conception and held to be unjust to the extent that they depart from it without sufficient reason… Thus, as far as circumstances permit, we have a natural duty to remove any injustices, beginning with the most grievous as identified by the extent of the deviation from perfect justice (Rawls 1971, 245-246).

As Thomas Nagel suggests:

> Ideal theory enables you to say when a society is unjust, because it falls short of the ideal. But it does not tell you what to do if, as is almost always the

> case, you find yourself in an unjust society, and want to correct that injustice. That is the province of what [Rawls] called "nonideal theory" (Nagel 2003, 82).

In this chapter the principles that guide resisting and redressing injustice will be explored. The need for principles of corrective justice is grounded in the moral duty to resist and transform injustice. Therefore, the analysis begins with a discussion of the moral duty to resist injustice. Based on that duty, nonviolent principles, as the default position of resistance are examined, followed by an analysis of the basic question of whether the use of military force is justifiable in resistance to injustice, its limitations, and subsequent post-conflict obligations.

1. Moral Duty of Noncooperation with and Resistance to Injustice

The following discussion seeks to articulate a basic justification for a moral duty to resist injustice grounded in the elements of fairness: equal human dignity, recognition, impartiality, and reciprocity. Furthermore, the duty to resist injustice is also based upon a belief in the possibility of justice.

As discussed in Chapter One, there are at least three basic types of duties correlated with rights:

1. Duties to *avoid* depriving others of their rights.
2. Duties to *protect* the other from deprivation of the right.
3. Duties to *aid* the deprived (Shue 1980, 52-53).

The duty to *avoid* deprivation entails the obligation to refrain from destructive action. The duty to *protect* entails the responsibility for the establishment of institutions that enforce the duty to avoid deprivation, thereby protecting persons from harm. The duty to *aid* is an obligation to *provide* for the victims of injustice.

These duties entail the identification of the agent(s) who holds the duty, the duty holder. Identifying the duty holder in turn involves a *justification* for imposing the duty onto the specified agent (C. Jones 2001). The identification and justification of the duty holder is contingent upon the type of duty involved and the capability of the agent to fulfill the duty.

Given the demands of fairness, there exists a *prima facie* moral duty to do no harm; to avoid harming others, and to avoid committing, or supporting acts of injustice, including structural injustice. As discussed above unjust harm is often structural, inhering in the policies and practices of institutions (e.g., racial segregation and denial of the right to vote). Duties to avoid harm

are held by all relevant agents: individuals, governments, and other non-governmental organizations (e.g., corporations), for such a duty requires only restraint as opposed to positive action (C. Jones 2001).

What agents can protect all persons from violations of vital interests and provide aid to all who been victims of rights violations? Protection and aid on society-wide levels can only be provided by social institutions, in particular government agencies. They require institutional action (C. Jones 2001). A basic reason for the establishment of government is to guarantee security of person, and each citizen has a reciprocal obligation to support that government (Hobbes 2008). Therefore, it can be argued that there is a basic duty of the government to protect and aid its citizens. In the language of the United Nations, governments have a "Responsibility to Protect" (R2P) their citizens (International Commission 2001). As discussed in Chapter 2, the subject of justice is the basic institutional structure of society. As Thomas Pogge argues, rights and duties pertain to "moral claims upon the organization of society" (Pogge 2001, 200), and thus are matters of social justice. It is the primary duty of the state, of government, to aid and protect citizens' rights, and to avoid depriving citizens of those rights. Rights as justified claims to, and protections of, one's vital interests call for the institutional structure of society, and its legal and governmental systems, to be just.

In turn, there is a direct duty of citizens to support and aid their government's Responsibility to Protect and to hold the government accountable when it fails to fulfill its duty. Citizens have a duty to support the establishment and sustainability of just institutions. This duty includes a duty to resist and redress injustice. If we are due the protection of our rights, and social institutions hold the duties of aid and protection, then individual citizens hold a basic duty to resist and reform social and political institutions, laws, policies, and practices that fail to provide that protection, or are intentionally designed to violate the rights of persons. Citizens are essential participants in the pursuit of justice, checking the power of the government by holding it accountable. In this sense citizens are the *agents* of justice.

Furthermore, since democracy is government by consent of the people, a basic right to dissent is inherent in the idea of democracy—freedom to publicly petition and critique the government. Political consent refers to mutually recognized agreements that are justifiable and therefore politically legitimate. As discussed in Chapter 8, the exercise of coercive power by the state should be exercised only in ways that all citizens may reasonably be expected to endorse or have no reason to reject (Rawls 2001). As Thomas Jefferson suggests in the *Declaration of Independence*: an informed

citizenry is needed to control, regulate, and condition the coercive power of the state, for "to secure [the people's] Rights governments are instituted among men, deriving their just powers from the consent of the governed" (Jefferson 2021 [1776]). Jefferson maintains that "whenever any form of government becomes destructive of these ends [life, liberty, and happiness], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its power in such form as to them shall seem most likely to affect their Safety and Happiness" (Jefferson 2021 [1776]). *Government by consent entails the right to dissent*. For democracy to endure, citizens must be free to publicly criticize, protest, and petition their government.

If government is violating its Responsibility to Protect, then given the above rights and duties, citizens have a basic duty of noncooperation with, resistance to, and reform of, unjust social and political institutions, laws, policies, and practices. As John Rawls put it:

> Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust (Rawls 1971, 1).

In the same vein Martin Luther King, Jr. states:

> I am in Birmingham because injustice is here (King 1963, 86).
>
> Moreover, I am cognizant of the interrelatedness of all communities and states. I cannot sit idly by in Atlanta and not be concerned about what happens in Birmingham. Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly (King 1963, 87).

The duties to protect and aid require that duty-holders *act* in some way, and not merely avoid certain harmful actions. In the case of injustice, the duty to protect requires action to abolish or reform unjust laws, policies, practices, and institutions. The duty to aid requires restoring the rights of those deprived of them. In other words, the idea of rights and correlative duties to protect and aid *presupposes* the duty to resist and transform injustice. There is a basic duty to resist and reform social and political institutions, laws, policies, and practices that threaten or violate the rights of persons. There is a basic duty to resist injustice, not to passively submit to it. The duty to resist injustice is mandated by the imperative of duties for

the *protection* and the *recovery* (duty to aid) of rights under the unjust conditions in which they have been lost. To remain passive and silent in the face of injustice is to be *complicit* in it. It is a form of violence, as Gandhi pointed out, to abstain from efforts to prevent harm; if it is possible to act to prevent harm to others *and if* one refrains from acting, one is in essence complicit in the harm done (Naess 1974).

1.1 Ethical and Moral Foundations of the Duty of Resistance

The moral foundation of the duty of resistance to injustice is fairness, including the normative assertion of human dignity: the presupposition that every human being should be considered as possessing an equal, inherent value. It can be argued that dignity is the preeminent ethical good that animates the struggle against injustice (Gooding-Williams 2018). For example, Martin Luther King, echoing Kant's second formulation of the Categorical Imperative, clearly articulates this principle: "Man must never be treated as a means .... but always as an end within himself" (M.L. King 1958a, 475). Each person's dignity finds expression through an inwardly felt sense of self-respect (Gooding-Williams 2018). In this sense, resistance proceeds from within the moral point of view of fairness. The recognition of equality can also be operationalized in terms of freedom. As King suggests: "To deprive man of freedom is to relegate him to the status of a thing, rather than elevate him to the status of a person" (King 1958a, 475), thereby violating equality. Freedom can be understood as the capacity to deliberate, decide and respond; what is fundamental to a life with dignity is the capability to conceive, plan, execute, and evaluate our choices - in other words, freedom to define and pursue one's own conception of the good life, consistent with the freedom of others (Nussbaum 2011; Rawls 1971; Sen 2009).

The recognition of each person's equal inherent dignity invokes a further principle: respect for persons. Equal respect for the inherent value and dignity of each person is of the greatest value, therefore, everyone has the highest-order interest in their protection and realization, including a social and political structure and a system of rights that protects and supports their realization; in other words, every person has a basic right, a justified claim, to them. What follows from these values of equality and respect is the moral demand of reciprocity (As discussed in Chapter 2, the recognition of equality and reciprocity, along with impartiality constitute the elements of fairness.). Reciprocity requires that we do not claim for ourselves that which we would deny others, and that justifiable moral agreement pass the test of reasonable rejectability. As Martin Luther King stated: "An unjust law is a

code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself" (King 1963, 94-95).

For King the "moral law" is the law of human dignity, and therefore, what each person is due as a matter of justice is freedom and respect. In turn, the protection and realization of the values of human dignity, equality, recognition, reciprocity, and freedom are urgent matters of justice; they pertain to our basic rights and duties. From this perspective, there is a basic, universally binding moral obligation to respect persons as ends, i.e., as sources of agency and worth, with their own life plans to design and pursue. King argues for an overarching, deontological duty that in our hearts we grant "thou-ness" to all other human beings. Fairness *calls for* the equal moral consideration of the good of others.

In turn this principle points to the nature of a just society: King emphasizes that the ultimate goal is equality. All must have a share in the creation of the "beloved community." Full racial integration, for King, was about gaining equal and full participation in all its political and social institutions, and his overarching philosophy of is deeply relevant today with respect to equalizing the moral consideration of all persons regardless of gender, race, ethnicity, or sexual orientation. Resistance to injustice is a performative demonstration and marker of human dignity; as such its overarching aim is the establishment a just society, what King referred to as the "beloved community." The achievement of a beloved community is grounded in a form of "love" expressed by the ancient Greek word *agape*. At the center of nonviolence stands the principle of love as *agape*. Gandhi referred to this force as the force of truth, (*Satyagraha*), and as the fundamental unity of persons (Naess 1974). *Agape* is the moral disposition to respond to others with unconditional respect and good will; its exercise does not discriminate among persons but responds to their equal inherent dignity (King 1999). It can be understood as a *sense of fairness*. In doing so it bestows membership in an inclusive moral community. Justice requires equal respect for persons. As Cornel West suggests: "Justice is what love looks like in public" (West 2018). Anything short of reciprocal respect is unjustly dehumanizing.

Based upon the above conceptualization of justice, Martin Luther King defines injustice in terms of dehumanization: "Any law that uplifts human personality is just. Any law that degrades human personality is unjust" (King 1963, 94). The oppression and domination that constitute structural and cultural violence are unjust because they are social practices, institutions, and belief systems that degrade the dignity and value of the

human personality and undermine and deny the right to freedom. As King states: “To deprive man of freedom is to relegate him to the status of a thing, rather than elevate him to the status of a person” (cited in Shelby and Brandon 2018, 199).

A potent example of injustice is racial segregation; segregation blocks the capacities of all to deliberate, choose, and take responsibility by imposing “restraint on my deliberation as to what I shall do, where I shall live, how much I shall earn, the kind of tasks I shall pursue” (King cited in D. Allen 2018, 154). It has the consequence of forcing people to live in “some system that has largely made these a priori decisions for me.” The result is that “I am reduced to an animal” (King cited in Allen 2018, 154). "All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority and the segregated a false sense of inferiority. Segregation, to use the terminology of the Jewish philosopher Martin Buber, substitutes an ‘I it’ relationship for an ‘I thou’ relationship and ends up relegating persons to the status of things” (King cited in Allen 2018, 154). An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. In that sense it violates the moral criteria of reciprocity and thus fairness.

Another example of dehumanizing injustice is the denial of the voting franchise: King stated: “The denial of the vote not only deprives the Negro of his constitutional rights - but what is even worse - it degrades him as a human being” (cited in Darby 2018, 173). For King, both vote denial and segregation are injustices that reduce blacks “to things rather than persons,” and they do so by cutting off “one’s capacity to deliberate, decide and respond” (Darby 2018, 173). “When I cannot choose what I shall do or where I shall live,” King tells us, “It means in fact that someone or some system has already made these decisions for me …” (Darby 2018, 173). Racial segregation, discrimination, and vote denial essentially publicly mark persons, within a socially stratified hierarchy, as having lower and higher ranks, with persons of high rank being conferred greater dignity (Darby 2018, 178-179). Through this system, law can level the social rank of persons up or down.

An extreme example of both oppression and domination is colonization, for example, the British colonization of India. The Colonized World is a world compartmentalized (segregated) and thus divided between two antagonistic forces - the colonizer and the colonized. Colonialism is naked violence, the imposition of and external coercive power to dominate (and exploit) an indigenous population (Fanon 2004 [1961]). The nonviolent

independence movement in India lead by Gandhi is a prominent example of nonviolent resistance to the injustice of colonization.

Injustice is that which violates the dignity of human personality and thereby the basic moral imperative of respect for persons, which takes the forms of political domination and social oppression. Justice requires a society, a "beloved community" in King's words, that respects the dignity of all persons manifested in systems of rights that guarantee moral, political, and social equality as well as the fair value of freedom. The ideal of justice equips citizen as agents of justice to recognize the existence of injustice and thereby to ground one's duty to resist and redress it.

Furthermore, resistance to injustice is grounded in and animated by a belief in the possibility of justice. The belief that justice is possible, even in the face of profound injustice. This belief is expressed by Martin Luther King in his famous statement: "the arc of the moral universe is long, but it bends toward justice" (King 1968). King derived this perspective from Rev Theodore Parker (1853) who wrote: "I do not pretend to understand the moral universe; the arc is a long one, my eye reaches but little ways; I cannot calculate the curve and complete the figure by the experience of sight; I can divine it by conscience. And from what I see I am sure it bends towards justice" (Parker 1853). In turn both King and Parker were echoing Immanuel Kant who asserted: "If justice perishes, then it is no longer worthwhile for men to live upon the earth" (Kant, Rechtslehre, in Remark E following §49, Ak:VI:332). And John Rawls, echoed Kant by stating: "If a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is not possible, and human beings are largely amoral, if not incurably cynical and self-centered, one might ask, with Kant, whether it is worthwhile for human beings to live on the earth" (Rawls 1999c, 127).

These statements express a deep belief in the possibility and necessity of justice. Without justice, life is profoundly diminished. Thus, we choose to believe that it is possible. This belief animates the duty to resist injustice with energy and motivation; when faced with injustice, our highest interest involves affirming our duty to resist and transform it.

2. Nonviolent Resistance to Injustice

Central to resisting injustice is the exercise of critique and dissent of institutions, laws and policies that are seen to be unjust, through the lens of moral reasoning and judgment. This critique and dissent endeavors to uncover and expose injustice through critical analysis of existing laws and practices, as well as articulating and justifying alternatives, and engaging in

deliberation to reach mutual agreement and possible reconciliation. Therefore, at the foundation of nonviolent resistance is the exercise of moral reasoning and judgment. As Gandhi put it: "Reason is another name for nonviolence…" (cited in Muller 2014, 214). Nonviolent resistance is, therefore, aimed at *conversion*—converting the opponent in order to reconcile and reach mutual agreement regarding the reform of unjust laws and institutions (Moses 1997).

However, the government and the supporters of its policies will often resist reasonable deliberation and reform; often they will need to be *forced* (pressured) to reconsider, deliberate, and negotiate to reach mutual agreement regarding reforms. It is often the case that change in the direction of justice occurs through what Derrick Bell refers to as "interest convergence" (Bell 1980; Crenshaw et al. 1996; Delgado and Stefancic 2017; V. Ray 2022). Those in power often will act to change institutions, laws, and policies, not purely on the moral grounds of their recognized injustice, but when it is in their self-interest to do so. Therefore, as King suggests in his *Letter from a Birmingham City Jail: "*We know through painful experience that freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed" (King 1963, 91). Therefore, "Nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue" (King 1963, 89). Negotiation is a necessary action for redressing injustice. In fact, negotiation is the very purpose of nonviolent direct action. However, in order to bring the opponent to the negotiating table nonviolent direct action may be needed to create the conditions that will open the door to negotiation (Ackerman and Kruegler 1994; Bondurant 1965; Hallward and Norman 2015; King 2012; M. King 1999; Mantena 2018; Ricks 2022; Shelby and Terry 2018).

Given that the means of action are always interdependent with its intended ends, that the means are the ends in the making, the resistive *force* employed must be consistent with fairness and thereby, respect for persons. In other words, resistive force should be *nonviolent* (Bondurant 1965; Iyer 1983 [1973]; King 2012; Muller 2014; May 2015; Naess 1974). "Nonviolence demands that the means we use must be as pure as the ends we seek. I have tried to make clear that it is wrong to use immoral means to attain moral ends" (King 1963, 110). The force used to resist injustice must be consistent with just ends that the action is intended to achieve. As such, nonviolent action is an extension of the exercise of moral reasoning, for the force employed is aimed at the creation of the conditions for reasonable deliberation leading to mutual agreement. Nonviolent resistance does not seek to defeat or humiliate the opponent, but to win friendship and

understanding. It is a means to awaken a sense of moral conscience in the opponent. The end is redemption and reconciliation. It intends the focus of resistance to be injustice itself, and not the perpetrators as such. Resistance is directed against forces of injustice rather than against persons. It is injustice the resister is seeking to defeat and transform, not the persons who perpetrate it (King 1963).

Furthermore, there are at least three additional arguments for nonviolent resistance: the Argument from Fallibility, Means-Ends Argument for Nonviolence, and the Withdrawal of Consent and Noncooperation Argument.

2.1 Argument from Fallibility

One good reason for non-violence is our fallible judgment. The *prima facie* moral presumption against doing harm to others maintains that any violation of this presumption must be morally justified. The sacrifice of the lives of others cannot be justified on grounds of necessity, for it is impossible to prove necessity. The violent agent needs to know with certainty that he is right in terms of the reasons he offers for the use of violent force. However, human beings are incapable of knowing with perfect certainty. If everyone's truth is partial and fallible, then truth dictates that we tolerate and enter into dialogue with each other, not seek to impose on, subjugate, or dominate each other (Bondurant 1965; Naess 1974; Iyer 1983 [1973]).

2.2 Means-Ends Argument for Nonviolence

As discussed above, ends and means are interconnected: the means represents the end in the making. The end is presupposed in the means: the means is the seed from which the end grows, therefore what means we use determines the ends achieved. Violent means increase fear and hatred, thereby decreasing the chance of reconciliation and the establishment of lasting justice. Furthermore, violent means suffer from an inability to appeal to conscience; nonviolent disciplined suffering can disarm and persuade opponents. Violent political action leads to the intensification of militarized political orders that amplify and legitimate the state's inherently militant tendencies (Mantena 2018).

2.3 Withdrawal of Consent and Noncooperation

As discussed above, from the point of view of free and equal persons, power should be structured and distributed in terms of the consent of the people. In general, political legitimacy is attained by avoiding structures and practices of *arbitrary* power. From the moral point of view, when power is exercised without the consent of those subjected to it, thereby being imposed, it is morally unjust and arbitrary (Forst 2017). The foundational idea is that the basic structure, distribution, and enactment of power be such that no reasonable citizen would have grounds to reject it (Forst 2017; Rawls 1993; Scanlon 1998). If it is to possess moral and political legitimacy, then the exercise of coercive state power must be based in the consent of citizens. Consent means that the People freely endorse the founding values and principles of the government and its laws and policies in light of those values and principles (Rawls 1971, 1993, 1997, 2001). Such consent renders the coercive power of government justifiable and legitimate.

The importance of consent provides a solid foundation for nonviolent direct action, for as nonviolent theorist Gene Sharp suggests, "...all nonviolent struggle has a basic assumption in common and that is its view of the nature of power and how to deal with it" (Sharp 1973, 6). It is the realization "that the exercise of power depends on the consent of the ruled who, by withdrawing that consent, can control and even destroy the power of the opponent" (p. 4). The withdrawal of consent by the people in protest against injustice shifts power away from the government to the people. As Sharp suggests:

> The central political implications of our analysis point to control of political power by withdrawal of consent. It is control, not by the infliction of superior violence from on top or outside, not by persuasion, nor by hopes of a change of heart in the ruler, but rather by the subjects' declining to supply the powerholder with the sources of his power, by cutting off his power at the roots. This is resistance by noncooperation and disobedience. If it can be applied practically and can succeed despite repression, this would seem to be the most efficient and certain means of controlling power (Sharp 1973, 47).

2.4 The Power of Suffering

Nonviolent direct action necessarily involves the suffering of the nonviolent actor, physically and psychologically. However, this suffering bestows power onto the nonviolent actor, whose suffering disarms and imbalances the opposition, in a kind of moral *jiu-jitsu*. The suffering

awakens the moral conscience of the opponent thereby opening a bridge to reconciliation. Moreover, it exposes injustice and calls attention to the moral rightness of the just causes. It speaks to and awakens the decent but silent majority (Bondurant 1965; Iyer 1983 [1973]; Muller 2014).

2.5 Nonviolent Direct Action

The above arguments and orientations to nonviolently moving the opposition toward negotiation and mutual agreement regarding redressing injustice are enacted through several nonviolent strategies and tactics. Nonviolent scholar Gene Sharp has identified over 200 types of nonviolent direct action (Sharp 1973). These strategies and tactics fall within three broad categories: Protests (acts of expression), non-cooperation, and nonviolent intervention (Chenoweth and Stephan 2011; Daza Sierra 2022; Ricks 2022; Sharp 1973, 1992). Protest (acts of expression) are symbolic actions intended to express critique and dissent to persuade the opposition to change their policies. Non-cooperation (acts of omission) is based on the withdrawal of consent from, obedience to, or non-cooperation with unjust political, social, and economic systems and structures. Nonviolent intervention (acts of commission) is the adoption of proactive actions to prevent the opponent from achieving its objectives or to create parallel structures intended to marginalize the opponent (Daza Sierra 2022).

Civil disobedience, grounded in a moral duty to conscientiously disobey unjust laws, is the most potent and radical form of noncooperation. It is a powerful expression of the withdrawal of consent, thereby shifting the balance of power between the protestors and the opposition. It can be defined as a *non-violent, public* violation of a law undertaken with the aim of pressuring those with power to change it (Brownlee 2017). It is contingent upon the conscientious acceptance of the legal consequences, thereby demonstrating fidelity to the rule of law (a necessary condition of justice). It enacts a conscientious or principled outlook, communication of both condemnation and a desire for change in law or policy. It claims fidelity to law and as such falls between legal protest and conscientious refusal, revolutionary action, militant protest and organized forcible resistance. It is generally regarded as more morally justifiable than both ordinary offences and other forms of resistance such as militant action or coercive violence (Brownlee 2017).

2.5.1 Examples of Nonviolent Direct Actions

The American civil rights movement of the 1950s-1960s nonviolently resisted the injustice of racial discrimination in the South and sought to end

legal racial segregation and to restore the right to vote for African Americans. The movement, led by Martin Luther King, Jr., John Lewis, James Lawson, Diane Nash, among many others, engaged in a series of nonviolent direct actions, including the Montgomery, AL Bus Boycott 1955-1956, Student Sit-ins in Nashville 1960, Freedom Rides 1961, desegregation campaign in Birmingham, AL 1963, the Mississippi Freedom Summer Voter Registration campaign 1964, the March on Washington 1964, and the voting rights campaign in Selma, AL 1965, including the march to Montgomery over the Pettis bridge (Chenoweth and Stephan 2011; Clark and Coy 2015; King 1958b; Ricks 2022).

The Indian independence movement led by Gandhi engaged in a decades long nonviolent movement to oust Great Britain from India (Engler and Engler 2014). The women's suffrage movement in Europe and the United States engaged also in a decades long nonviolent campaign in the struggle for equal suffrage and equal rights. The current nonviolent Black Lives Matter movement in recent years has engaged in an effort for police and criminal justice reform and to assert the equal value of Black lives in the face of racial injustice (Wolflink 2023). The Solidarity movement in Poland successfully overturned the communist government through the nonviolent direct actions of mass protest, labor strikes, and civil disobedience (Maciej Bartkowski 2009). The First Palestinian Intifada was a nonviolent attempt to protest and redress the injustice of the Israeli occupation of the West Bank (Chenoweth and Stephan 2011). There are of course numerous other examples of nonviolent direct actions (Ackerman and Kruegler 1994; Maciej Bartkowski 2013; Chenoweth and Stephan 2011; Sharp 2010).

These movements engaged in resisting and redressing injustice through critique and dissent, civil disobedience, active resistance, disruption, protest marches, withdrawal of consent, and moral jiu-jitsu or the power of suffering to awaken the conscience causing a redistribution of power in the community; all movements attempting to transform the imbalance of power through the principled use of nonviolence.

Nonviolence is both a normative philosophy of justice and a political strategy of transformative direct action; it is primarily a principled response to injustice. Being grounded in a duty to resist injustice it can be argued that resistance to injustice is an *extension of* moral reasoning and judgment. Its aim is to engage the supporter of injustice in the exercise of moral deliberation, reason, and judgment to reach a mutually agreeable reconciliation and transformation of injustice. It does this through critique and dissent and through the employment of nonviolent direct actions to move the opposition to deliberation and negotiation. This action is centered on the withdrawal of consent in a variety of forms that follow from its basic

moral principles of human dignity, respect for persons, and good will. In doing so, nonviolence aims at establishing a just society, the "beloved community".

Furthermore, it can be argued that the philosophical foundations and strategic elements of nonviolence render it a morally and strategically default position for resistance to injustice and its transformation. Nonviolent means of resisting injustice shapes nonviolent ends towards the goal of lasting peace and justice; they appeal to the conscience of the opponent, seek reconciliation rather than domination, are consistent with the fallibility of human reason, and attempt to be universally inclusive.

3. The Use of Military Force

As discussed above there is a moral duty to resist injustice. From the moral point of view of fairness, there exists a *prima facie* moral presumption *against* doing harm to others, clearly including the use of military force (Walzer 1997). The basic premise concerning the moral justifiability of the means to the resistance of injustice is the *prima facie* presumption of a duty to do *no harm*. All things being equal, we have a *duty not to harm others*. This duty, in turn, grounds *nonviolence as the default position* concerning the justification of the means of resistance. Nonviolent direct action has proven to be quite effective in resisting various types of structural social injustice, such as racial segregation, denial of the right to vote, environmental injustice, among many other kinds of injustice (Chenoweth and Stephan 2011). Should the nonviolent default position be considered to be absolute? In other words, can it ever be overridden; are there special circumstances that justify the use of military force to resist particular kinds of injustice? If it can be overridden, on what rational basis can it be morally justified? As discussed in Chapters 2 and 4, aggression is the crime of the unjustified use of force resulting in direct violence, the most prominent form of aggression being the unjustified military invasion of another nation. As Michael Walzer put it: "Every violation of the territorial integrity or political sovereignty of an independent state is called aggression" (Walzer 1997, 52). Aggressive warfare "interrupts peace ... peace-with-rights a condition of liberty and security that can exist only in the absence of aggression itself" (p. 51). Aggression violates the basic right of security of person. The purpose of what follows is to explore whether the use of military force is ever justifiable, even in cases of military aggression, and if so, why and on what principled basis can the use of military force as a means of resistance to injustice. Are there principles of corrective justice that can be appealed to justify the use of military force to resist the injustice of military

aggression? Is military aggression an injustice that would justifiably require counter military force to resist?

3.1 Absolute Nonviolence

Proponents of absolute nonviolence, often referred to as Pacifists, maintain that the use of lethal force is never morally justifiable. They maintain that it is morally wrong to use lethal force to resist and redress injustice. From this perspective, the use of lethal force is wrong under all conditions; there are never any mitigating circumstances that would render it morally justifiable. Guided by the love command, compassion, or nonviolence they maintain that killing is wrong, no matter what the circumstances. The Pacifist posits an *absolute presumption against violent force*. It is never justifiable to take another life to save one. Human life is sacred, and it is always morally wrong to kill. Thou shall not kill is an absolute moral principle. Pacifists maintain that means and ends are inseparably interconnected. To commit evil in order to do good is a contradiction, a fundamental moral error of great import. Good can never come of evil; killing in any guise is evil (Koontz 1996; Ramsey 1961). It is always better to die than to kill and even to let others die than to kill (Allen [1991] 2001; Anscombe 1970; Bishops 1992 [1983]; Boyle 1996; Cady 1989; Cartwright 1996; The-Dalai-Lama 1999; Egan 1999; Finnis 1996; Hashmi 1996; Holmes 1989; Iyer 1983 [1973]; Koontz 1996; Narveson 1970; Tibi 1996; Turner Johnson 1999, 1992, 1981; Wasserstrom 1970; Walzer 1997; Yoder 1984).

There is, however, a very important distinction between nonviolence as an individual moral creed and nonviolence as a policy and thus a principle of corrective justice. As a creed it involves individual choice regarding one's own personal well-being, and if out of individual moral conscience one choices to die rather than kill, then it is morally justifiable, perhaps even praiseworthy. However, nonviolence as a policy is more problematic. As a policy it demands that leaders forego the use of military force and rely exclusively on nonviolent resistance to the injustice of aggression. This position is often misunderstood. Pacifists who advocate nonviolence as a policy have been criticized for being morally bankrupt for not fighting against injustice and aggression (Narveson 1970). This critique understands pacifism as *passivism*, which is a fundamental misreading. Pacifism as a policy does strongly advocate nonviolent resistance to injustice, but not resistance through the use of military force.

In the face of an aggressive invasion by an alien military power, nonviolence as policy dictates immediate surrender, for the use of force is

not an option to repel an invading army and nonviolent resistance to invasion would be a useless and suicidal strategy. Resistance comes after surrender wherein the occupying army would face massive nonviolent resistance and non-cooperation. Given that all governments are based upon consent of the governed, the occupation would be untenable. The alien power would eventually leave in defeat, just as the British quit India. This is a strategy of resistance that transforms violent conflict into political struggle. Nonviolent resistance replaces warfare with political struggle (Sharp 1973; Walzer 1997).

A recent example is the Ukrainian Nonviolent Civilian Defense effort in the face of Russian aggression in 2022 engaged in 235 nonviolent actions between February 24 and June 30, 2022: 148 fell into the category of "Protests (acts of expression)", 51 actions in the category of "non-cooperation" and 36 actions of "nonviolent intervention". Nonviolent resistance was geographically distributed in 20 actions the northern regions of the country (Chernihiv, Sumy and Kyiv); 191 actions in the south (Kherson, Zaporizhia and Odessa); 9 actions in the east (Kharkiv, Luhansk, Donetsk); 9 actions in the west (Lviv, Chernivtsi, Rivne), and 6 actions at the state level or in more than one region. The vast majority of nonviolent actions were locally organized without coordination at the national level. The effect of nonviolent resistance to the invasion included having a demoralizing effect on Russian troops, resulting in the defection of Russian troops; to establish negotiation processes between local communities and the Russian army to protect the civilian population and the infrastructure of localities. Such negotiations to protect the civilian population, however, were not possible in other contexts such as Mariupol or the western localities of Kyiv, Irpin or Boucha, or small towns of Chernihiv and Sumy, where nonviolent civilian resistance could not be organized due to the high level of violence exercised by the Russian troops resulting in massacres of the civilian population. Civil resistance against the Russian invasion also strengthened dissident groups in the Crimean Peninsula and the Donbass territories. Nonviolent resistant has also facilitated the establishment of a war crimes monitoring infrastructure created by leading human rights organizations enabling the collection and verification of human rights violations and war crimes committed by Russian troops (Daza Sierra 2022).

While having significant effects, nonviolent resistance alone, however, has been able to resist the injustice of Russian aggression (For other examples see Ackerman and Kruegler 1994; Bartkowski 2009, 2013; Chenoweth and Stephan 2011). Sometimes it may be the case that an aggressor can only be resisted by militarily defeating the aggressor. As Michael Walzer points out, nonviolent resistance to aggression and

occupation is plausible only if the alien power adheres to moral principles in their conduct of warfare. He writes:

> [Nonviolent resistance] is … conceivable in the world we know. It is only just conceivable, however; for the success I have described is possible only if the invaders are committed to the war convention-and they won't always be committed. While nonviolence by itself replaces aggressive war with political struggle, it cannot by itself determine the means of struggle. The invading army can always adopt the common methods of domestic tyrants … In his "Reflections on Gandhi," George Orwell points out the importance of exemplary leadership and wide publicity in a nonviolent campaign and wonders whether such a campaign would even be possible in a totalitarian state. 'It is difficult to see how Gandhi's methods could be applied in a country where opponents of the regime disappear in the middle of the night and are never heard from again.' Nor would civilian resistance work well against invaders who sent out squads of soldiers to kill civilian leaders, who arrested and tortured suspects, established concentration camps, and exiled large numbers of people from areas where the resistance was strong to distant and desolate parts of the country. Nonviolent defense is no defense at all against tyrants or conquerors ready to adopt such measures (Walzer 1997, 331-332).

Given the probability that the invading power would not adhere to the principles of the war convention, for they have just committed a crime of aggression, the costs to civilian population may be much higher than the costs of defending the nation via a professional military, even though it may involve killing the soldiers of the invading power. What is more just, killing invading soldiers, or letting one's own innocent people die or live for a significant period of time under oppression? It could be argued that nonviolence as a policy may place a disproportionate, and therefore morally unjustifiable, burden on the innocent. Nonviolence as policy may fail on the grounds that it is indiscriminate and disproportional concerning one's own citizens. It may also be strategically ineffective in resisting the injustice of aggression.

We are led to the question: On what rational basis could the use of military force be justifiable in resistance to the injustice of aggression? In what follows two alternatives will be explored: a prudent calculation of self-interest—the basis of the Realist tradition—and moral reasoning and judgment grounded in the principles of *jus ad bellum*—a central aspect of the just war moral tradition.

3.2 Realism

As discussed in Chapter 4, Realism is a theory of international relations that maintains that relations between nation-states are purely political, in the sense that they exclusively concern interests and power, not what is right or good *per se,* thereby denying the existence of morality in the international arena. In the absence of a world sovereign, it is rational to use any means necessary, including military force, to pursue the national interest, as long as one is in a position of superior military power. Fundamentally, there exists a moral imperative to provide security for the people of the nation. Security is first and foremost the basic obligation of the State. From a Realist perspective, given this basic obligation, the national interest and the security of the people are to be pursued through the prudent exercise of power, including the deployment of military force. If State agents are charged with the protection of their citizens, then the pursuit of security through the exercise of power becomes morally justified, for the nation is pursuing what is right: the security of its citizens and the preservation and advancement of the national interest (Brown 1992). An important aspect of the pursuit of the national interest is the prudent exercise of military force. It is likely that an unconstrained use of power will lead to a proliferation of enemies, which in the long term will most likely undermine the national interest. Restraint is thus called for by prudence.

One principle of justification for the use of military force, therefore, is the prudent calculation of national interest. In pursuit of the national interest, does a government have any moral obligation to "non-nationals", to those outside the boundaries of the national moral community? Is the pursuit of one's national interest a legitimate justification for inflicting harm, and even death, onto the citizens of other societies? Can partiality to the good of one's community, and the citizens that comprise it, be so exclusive to the point of a complete denial of concern for the well-being of others? Does one owe, in a positive sense, the Other moral concern? The Realist answers that the protection of one's own citizen and the pursuit of the self-interest of one's nation overrides moral consideration of non-nationals. In contrast, the Just War moral tradition answers yes to these questions and offers a set of principles, a moral calculus, for the justification of the use of military force, the right conduct of the use of that force, and a set of obligations to restore a just peace after its use—*jus ad bellum, jus in bello,* and *jus post-bellum* respectively.

3.3 Jus ad bellum

From the moral perspective of the Just War tradition, the decision to engage in war, to intervene with lethal force, is a fundamentally moral one. What principles and standards of judgment could distinguish and morally justify the use of military force? The long tradition of Just War tradition, dating to St. Augustine, is an attempt to explore these questions and to define principles of justification for the decision to use force and principles to guide the right conduct of war (Allen 2001 [1991]; Bishops 1992 [1983]; Boyle 1996; Finnis 1996; Holmes 1989; Ramsey 1961, 1983 [1968]; Turner Johnson 1981, 1999). The Just War tradition has established criteria for deciding whether the use of force is justifiable. These criteria comprise what is traditionally referred to as *jus ad bellum*. These criteria assume a positive presumption for a just peace and a basic *prima facie* nonviolent presumption, the nonviolent default position described above. Historically *jus ad bellum* criteria have included the following principles: just cause, right authority, right intention, proportionality, reasonable hope of success, and last resort.

3.3.1 Just Cause

The protection and preservation of the value of a just peace is at the core of just cause. The spirit of just cause is captured by the following statement of the U.S. Catholic Bishops (Bishops 1992 [1983]): “War is permissible only to confront 'a real and certain danger', i.e., to protect innocent life, to preserve conditions necessary for decent human existence and to secure basic human rights” (p. 98). Historically, just cause included three actions: Self-defense and protection of the innocent against armed attack, the repossession of persons, property, or other values wrongly ceased, and retribution or the punishment of evil. In the subsequent development of the tradition, including international law, repossession and retribution have been eliminated as valid justifications. Self-defense, the protection of innocent others, and protection against threats to international peace are conceived as the central justifications. These justifications may be conceived as a response to the injustice of the crime of aggression, the unlawful violation of the principle of nonintervention. If aggression is a crime according to international law, perhaps *the* crime, then states have a right to respond to aggression out of self-defense with military force, especially given that there is no world government or police force to uphold the right of each nation to sovereignty and territorial integrity and the correlative duty of nonintervention. Under these conditions self-defense and the protection of others is a morally justifiable form of self-help. In recent

thinking, additional justifications have emerged: military humanitarian intervention (Ramsborth 1996) and the doctrine of preemption.

3.3.1.1 Military Humanitarian Intervention

The justification of military humanitarian intervention is not centered on inter-state aggression; it concerns intra-state aggression. If a government engages in or allows heinous violations of human rights, attacks its own people (e.g., genocide), then the violation of the principle of nonintervention is justifiable in order to protect the rights of the citizenry against threats perpetrated or allowed by their own government. In turn, if national sovereignty is thereby contingent, then the principle of nonintervention is not absolute. If a sovereign national government commits or allows clear and significant violations of the human rights of its own citizens, committing crimes against humanity (e.g., genocide), then its claim to sovereignty is no longer legitimate, for it has failed to perform its primary duty as a government, the protection of the human dignity of its citizens (referred to as the Responsibility to Protect (R2P)); through its own actions it has invalidated the social contract. In such cases the international community is morally justified, perhaps even obligated, to intervene. Such a nullification of sovereignty and the duty of nonintervention must be confined to heinous actions, to crimes against humanity recognized by the international community to prevent the idea of humanitarian intervention from devolving into a specious justification for aggression (Bishops 1992 [1983]; Hoffman 1996; Ramsborth 1996; Walzer 1996).

In the context of *jus ad bellum*, humanitarian intervention constitutes a new just cause. The acceptance of the moral legitimacy of humanitarian intervention as a just cause affirms the universal character of the moral principle of human dignity and human rights as foundational to the nature of a just peace. Intervention to protect a people from its own government highlights the motivating principle beyond the Just War tradition and the fundamental interconnection between that tradition and international human rights: to establish a just peace defined by universal respect for human dignity. Humanitarian intervention highlights the spirit of just cause: the protection and establishment of a just peace (Allen 2001 [1991]; Boyle 1996; Cady 1989; Bishops 1992 [1983]; Finnis 1996; Holmes 1989; Ramsey 1961; Turner Johnson 1981, 1999; Walzer 1997).

3.3.1.2 The Doctrine of Preemption

The combination of perceptions of and the conception of potential responses to the terrorist acts on the United States on September 11, 2001, led President Bush's administration to a new strategic doctrine central to the conduct of the war on terrorism: *preemptive action* (Snauwaert 2004). Given the nature of the threat, including the potential acquisition and use of weapons of mass destruction, it was argued that the only real means of security would be to eliminate the threat at its source prior to its execution. The logic was that we cannot wait for the terrorists to strike to defend ourselves; we must act first to preempt/prevent the threat. Preemption is given the strongest justification when the linkage between terrorism and the proliferation of weapons of mass destruction is recognized – the Bush administration maintains under these conditions it would be irresponsible, a gross dereliction of duty, to wait for the enemy to attack before preemptively responding. The threat must be eliminated before it is manifested. The Bush National Security Strategy stated:

> . . . defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country (NSS 2002, 5).

Implicit in this strategy is a very important linkage: the declared enemy is not only the terrorist but also Nation-States that aid them. President Bush articulated this principle on the night of 9/11: "We will make no distinction between the terrorists who committed these acts and those who harbor them" (Bush 2001, 1). In combination with the doctrine of preemption this linkage to States is radical, for it declares the right to violate the duty of nonintervention that is central to the nation-state system. The Bush Doctrine is in essence asserting an extension of the just cause of self-defense beyond an imminent, clear and present, danger to *potential* threats. The question is whether this extension is morally justifiable as a just cause.

3.3.2 Right Authority

The legitimate authorization of the use of force lies exclusively with an official agent of a sovereign political entity. The choice to use force is thus limited to a political sovereign and is based in the principle of sovereignty.

The legitimate use of force is an implicit and defining element of political sovereignty (Ramsey [1968] 1983). Importantly, the grounding of right authority in sovereignty suggests that those employing force possess the capacity to control it (Turner Johnson 1999). Right authority also requires an official declaration or statement of war, which includes the aims to be achieved and the justifications for using force (Allen 2001 [1991]). In terms of contemporary international law, under the jurisdiction of the United Nations Charter, the use of force must not only be authorized by a sovereign state, but it also must be authorized by the U.N. Security Council (Hoffman 1981, 1996; Ramsborth 1996; Turner Johnson 1999). At the core of the criterion of right authority is the intent of bringing legal and political legitimacy to the use of military force, and thereby to control it so that it is used for morally justifiable political ends.

3.3.3 Right Intention

The intention to use force must be in accordance with the just cause: self-defense; protection; and the establishment of a just peace. It does not include the annexing of territory, economic gain, control, increased power, hegemony, or other self-interested intentions. Revenge, retribution, or punishment are also not legitimate intentions (Turner Johnson 1999). The question of right intention is in turn grounded in the moral principle of double effect. At the core of right intention is the moral principle of double effect. The principle of double effect is based upon the perception that an action can have more than one effect: the intended effect and at least one unintended or secondary effect "beside" the intention. For example, the use of lethal force as an act of self-defense has two effects: saving one's own life and harming the aggressor. In this case the intention is to save life, and the harm done to the aggressor is an unintended by-product. The primary intention is to prevent injustice. Another example of double effect is ectopic and other life-threatening complications in late-term pregnancies. In these cases, does one act to save the life of the baby while killing the mother or acting to save the mother's life while killing the baby, or do we not act at all, allowing both to die? The principle of double effect justifies taking one life to save the other, usually the mother's life. The intention is to save the mother's life; the killing of the fetus is beside the good intention. In these cases, the killing is a by-product of the intention to do good and/or to prevent harm (Ramsey 1961). As John Ford put it:

> The foreseen evil effect of a man's action is not morally imputable to him, provided that (1) the action in itself is directed immediately to some other result, (2) the evil effect is not willed either in itself or as a means to the

> other result, (3) the permitting of the evil effect is justified by reasons of proportionate weight (Ford 1970, 26).

Double effect justification may be stronger regarding decisions made by leaders who are charged with the protection of their society and its people. It may justify the protection of a society and its people from aggression, for those charged with the protection of a people have an obligation to safeguard the society and its citizens. The good is the protection of the rights of citizens, one's own or others, and the harm done using military force to provide protection is a secondary by-product of that right intention. The use of lethal force in these examples is justified by the principle of double effect on the grounds that the harm done using military force, the killing of another human being(s) - combatants as well as noncombatants - is a side effect of doing what is necessary as a last resort to protect the innocent from aggression, and oppression. The fundamental conclusion here is that it is morally justifiable, consistent with the principle of right intention, to take life in order to protect life in cases of self-defense (Anscombe 1970; Cady 1989; Ford 1970; Hoffman 1996; Holmes 1989; Ramsey 1961, 1983 [1968]; Walzer 1997; Yoder 1984).

3.3.4 Proportionality of Ends

Proportionality of ends maintains that the good achieved using military force must be greater than or at least proportional to the harm done. Here there is an intimate connection between the use of force and the ends to be achieved. The goal of the principle of proportionality under *jus ad bellum* is to determine the validity of the just cause. If the legitimate goal of any and all uses of force is to restore a just peace, then the excessive use of force is never justifiable, for to violate the rights of others, implicit in excess, is to impede the establishment of justice. The adage that the village be destroyed to save it is morally invalid. This principle leads to and is intimately connected with the principles of *jus in bello,* the right conduct of war, or war convention, which constitutes a proportionality of *means* (Allen 2001 [1991]; Bishops 1992 [1983]; Cady 1989; Turner Johnson 1999). The principle of proportionality of means dove-tails with the criterion of reasonable hope of success.

3.3.5 Reasonable Hope of Success

This criterion entails a calculation of the probability that the use of force will achieve the specified ends. If success is not likely, then the harm done will be disproportional to the good achieved, and thus will not be justified.

This stipulation constitutes an attempt to morally check zealous leaders, thereby protecting the citizens, military, and nonmilitary alike, from the imprudence and/or unethical ambitions of their leaders. In doing so this criterion integrates a Realist prudence into decision-making while maintaining a robust moral framework.

3.3.6 Last Resort

In alignment with the nonviolent default position this last criterion mandates that the use of force be the last resort, that sufficient nonviolent attempts to resolve the conflict have been made and have failed. If all attempts at nonviolent conflict resolution have been reasonably made, and the conflict or threat persists, then the use of force is rendered the only means left to resist the injustice of aggression. Attempts that have been "reasonably made" means that the exact criterion of last resort can never be known with absolute certainty but is still rendered as rational. The credibility of one's claim for the justification of the use of force is contingent upon one's commitment to peace itself. If one has not been committed to peace in principle, then one's claim of justification justified cannot be credible. The credibility of the claim of just war by any state or official is contingent upon the history of a state's or leader's commitment to the principles of just war, including an abiding commitment to peace. In other words, the historical practice of states is an objective criterion for determining the veracity of a state's claim to moral justification for the use of force. For a state to invoke just war principles to justify its actions when in the past it has acted in violation of those principles discredits the state's claim of moral justification for its decision to use force against others (Holmes 1989; Yoder 1984). The principle of last resort places a strong moral restraint on war and is consistent with the overarching goal of a just peace. It encodes the *prima facie* presumption against violence, the nonviolent default position, as well as giving force to the legitimacy of the just cause (Allen 2001 [1991]; Boyle 1996; Cady 1989; Bishops 1992 [1983]; Finnis 1996; Holmes 1989; Ramsey 1961, 1983 [1968]; Turner Johnson 1981, 1999; Walzer 1997; Yoder 1984).

3.3.7 Jus ad Bellum Summary

The above criteria of *jus ad bellum* constitute the elements of a morally justified use of force. According to the tradition, all the criteria must be met for the use of force to be morally justifiable. They are based upon the fundamental moral consideration of the rights of others. They are aimed at

the protection of the innocent and the establishment and protection of a just international peace. They are founded upon the basic moral ground of human dignity, thereby being consistent with the imperatives of the democratic logic of equality. This logic does not only apply, however, to the initial decision to use force to protect justice; it also applies to the right conduct of the use of force embodied in the principle of *jus in bello*.

3.4 Jus in Bello: The War Convention and Humanitarian Law

If the end of just war moral reasoning is the protection of human dignity by providing moral justification for the use of military force in resisting the injustice of aggression, then the use of force itself—the levels, means, and targets of force, must also be consistent with the moral imperative to protect. This is the consideration of *jus in bello*, or the right conduct of war. As indicated above, there is a deep connection between the principles of *jus ad bellum* and *jus in bello.* It can be argued that they are in fact inseparable; if the means of war are unjust, the war itself is unjust (Wasserstrom 1970; Yoder 1984). This connection is noted in the very beginning of just war moral reasoning by Augustine who maintains that the conduct of war determines the kind and quality of the peace attained (Turner Johnson 1999). At issue in the consideration of the war convention is the question of the human rights of both combatants and noncombatants. This question pertains to the two dimensions of the war convention: the law of war (Hague Law): the specification of the reciprocal rights and duties of combatants, humanitarian law proper (Geneva Law); and the rights of noncombatants (including wounded and imprisoned combatants), entailing the inherent duties of combatants toward noncombatants (Allen 2001 [1991]; Bishops 1992 [1983]; Cady 1989; Holmes 1989, [1989] 1992; Ramsborth 1996; Ramsey 1983 [1968]; Turner Johnson 1981, 1999; Walzer 1970, 1997; Yoder 1984).

The first principle of *jus in bello*, proportionality of means, pertains to the law of war. It specifies limits on the level and means of force in an attempt to avoid unnecessary harm, that is, to maintain a proportionate degree of harm done to combatants relative to the good achieved (Turner Johnson 1999). This concern for the limiting warfare through a concern for proportionality is founded upon a recognition of the human rights of combatants. It suggests that there exists a common humanity that is shared by enemies in a conflict, and that shared humanity dictates that even under the extreme conditions of violent warfare the dignity of the combatant should be respected (Walzer 1997). Why should combatants concern themselves with proportionality? Why isn't it justifiable to use any means

necessary to obliterate one's enemy? It isn't justifiable because the enemy is also human. The command of the World War II Japanese General Okamura: "Kill all! Burn all! Destroy all!" is morally unjustifiable, for it ruptures the common human bond and violates the human dignity of the combatant.

The second principle of *jus in bello*, the principle of discrimination, pertains to the question of noncombatant immunity. Discrimination mandates noncombatant immunity. The intentional killing of innocents as a military strategy is never justifiable. The intentional killing of innocents for military or political gain is the very definition of *terrorism* (Carr 2002). As such, acts of terrorism can be committed by individuals, groups, *and States*. The principle of discrimination morally prohibits terrorism or wars of terror in absolute terms. The intentional killing of noncombatants is a War Crime (Gutman 1999). An important example is the strategy of obliteration bombing of cities. Obliteration bombing inflicts a heinous level of terror on entire populations of noncombatants. It has been justified as reprisal to exact revenge, to exert extreme pressure on the government to surrender, and by military necessity. Furthermore, it has been argued that by supporting the aggressor government the citizens of the aggressor nation are complicit in the aggression and therefore forfeit their right to noncombatant immunity. Are any of these justifications valid, or is such a military strategy an act of *terror* that is never justified, for it violates the fundamental rights of innocents in order to achieve military and political ends, ends which cannot justify the means of terror (Ford 1970)?

Another important issue is the use (actual and threatened) and existence of nuclear weapons. If the obliteration bombing of cities is not morally justifiable, then the use of nuclear weapons, a more powerful version of obliteration bombing, would also not be justifiable. However, is the doctrine of nuclear deterrence justifiable? The doctrine of nuclear deterrence is based in the idea of mutually assured destruction, in the sense that a first strike use of a nuclear weapon would lead to nuclear retaliation and its concomitant destruction. In essence, nuclear deterrence is akin to the government seeking to prevent murder by threatening to kill the family and friends of every murderer. Is the threat itself immoral? Does it violate the principles of *jus in bello*: Discrimination and Proportionality. Is it wrong to threaten what is morally wrong to do? Does the fact that it serves a higher purpose of security, of avoiding foreign domination, make it morally justifiable? The International Court of Justice, for example, has ruled that: "[M]ethods and means of warfare, which would preclude any distinction between civilian and military targets, or which would result in unnecessary suffering to combatants, are prohibited. In view of the unique characteristics of nuclear

weapons... the use of such weapons in fact seems scarcely reconcilable with respect for such requirements" (Threat or Use of Nuclear Weapons, 1996 I.C.J. at 257, 262–63). Furthermore, the International Court of Justice concluded that "if the use of force itself in a given case is illegal— for whatever reason—the threat to use such force will likewise be illegal." If an envisaged use of weapons violates the requirements of international law, then a threat to use them would be contrary to that law. Deterrence involves a real intention to use nuclear weapons, and by doing so, it issues a seriously intended military threat (Granoff 2000).

Given that it can be argued that the use of nuclear weapons is morally unjustifiable and that the threat of their use for the purpose of deterrence may also be morally unjustifiable, could it be argued that the very possession of them is morally unjustifiable in accordance with the principles of *jus in* bello? The Foreign Minister of Australia, Gareth Evans, for example, made the case that the very existence of nuclear weapons is morally unjustifiable:

> The fact remains that the existence of nuclear weapons as a class of weapons threatens the whole of civilization. This is not the case with respect to any class or classes of conventional weapons. It cannot be consistent with humanity to permit the existence of a weapon which threatens the very survival of humanity. The threat of global annihilation engendered by the existence of such weapons, and the fear that this has engendered amongst the entire postwar generation, is itself an evil, as much as nuclear war itself. If not always at the forefront of our everyday thinking, the shadow of the mushroom cloud remains in all our minds. It has pervaded our thoughts about the future, about our children, about human nature. And it has pervaded the thoughts of our children themselves, who are deeply anxious about their future in a world where nuclear weapons remain (Gareth Evans of Australia, Verbatim Record, 30 Oct. 1995, 42, available at http://www.icjcij.org/icjwww/icases/iunan/iunan_cr/iUNAN_iCR9522_19951030.PDF) (Granoff 2000).

Speaking to the moral justifiability of the very possession of nuclear weapons the United Nations General Assembly has passed the Treaty on the Prohibition of Nuclear Weapons (TPNW), or the Nuclear Weapon Ban Treaty (UN 2017). The treaty passed on 7 July 2021 by United Nations General Assembly with 122 in favor, 1 against (*Netherlands*), and 1 official abstention (*Singapore*). Sixty-nine nations did not vote, among them all of the *nuclear weapon states* and all NATO Member countries except the Netherlands. The treaty entered into force on 22 January 2021. As of 22 September 2022, 68 states have ratified or acceded to the treaty. The treaty prohibits the development, testing, production, stockpiling, stationing,

transfer, use and threat of use of nuclear weapons, as well as assistance and encouragement to the prohibited activities. The nuclear-weapon-ban treaty constitutes an unambiguous moral commitment to nuclear disarmament and a nuclear-weapon-free world. Is the Treaty on the Prohibition of nuclear weapons morally compelling?

A further issue is the unintentional deaths of noncombatants caused by actions dictated by military necessity, so called “collateral damage” of incidental harm. A telling example is Allied action during World War to prevent the Nazi Germany from obtaining a nuclear capability. The case is summarized by Jonathan Glover:

> In 1942 Heisenberg and other physicists won funding for the German programme by winning over Bernhard Rust, the Minister for Education. The dangerous physical work was partly done by slave labour: the uranium plates used in the attempt to build an atomic reactor were made by 2,000 women from the camp at Sachsenhausen.
>
> In 1943 Niels Bohr escaped to Scotland, taking with him Heisenberg's drawing of a reactor. It seemed vital to cut off the German supply of heavy water. The Germans had enlarged the Norsk Hydro plant at Rjukan in Norway to produce larger quantities of heavy water. Commandos had wrecked the plant once, but it had been back in production until it was put out of action again by a bombing raid. The Nazis now decided to dismantle the plant and to take it and the heavy water to Germany.
>
> It was vital to stop the heavy water reaching Germany, but there was no time for a full-scale raid on the plant. Only one trained commando, Knut Haukelid, was available locally, who could not destroy the plant. The water would go by train, crossing a lake by rail-ferry. The train would be hard to blow up and would be crowded with passengers. The ferry carried fewer people, but blowing it up would still kill passengers. And killing the guards would lead to reprisals against civilians. Haukelid was told that the results were important enough to justify these losses.
>
> The plant's transport engineer supported the plan, but was concerned to keep loss of life to a minimum. He saw that the water went on the relatively uncrowded Sunday ferry. Haukelid and others blew up the ferry, killing twenty-six of the fifty-three people aboard, but also sending all the heavy water to the bottom of the lake. Kurt Diebner, a physicist in the Ordnance Department of the Wehrmacht, later said, 'right up to the end of the war, in 1945, there was virtually no increase in our heavy water stocks in Germany ... it was the elimination of German heavy water production in Norway that was the main factor in our failure to achieve a self-sustaining atomic reactor before the war ended' (Glover 2000, 91-92).

Was the loss of 23 innocent civilians justified to prevent the Nazis from obtaining an atomic bomb? The crucial determining factor in these cases is proportionality. Is the good achieved or the harm avoided significantly more than the harm done to noncombatants? In the Nazi heavy water case, it is reasonable to conclude that the action was clearly justified by compelling reasons of proportionality. This case may qualify as what Michael Walzer refers to as a "supreme emergency." A supreme emergency is one wherein the survival of the society is directly and imminently threatened. In such a case the indiscriminate use of force is justified by a compelling degree of proportionality (Walzer 1997). This argument suggests that discrimination is not morally absolute, although it entails a very strong *prima facie* presumption in favor of it.

Furthermore, humane treatment of soldiers and prisoners of war is an implicit principle within the principles of noncombatant immunity and proportionality. When a soldier is captured, they become a noncombatant who is in an extreme position of vulnerability. This status triggers the moral imperative of humane treatment, to treat the prisoner with the least amount of suffering possible. Humane treatment invokes a *prima facie* prohibition against torture. Torture can be defined as the intentional infliction of extreme physical and mental suffering on a non-consenting, defenseless person, as well as the substantial restriction of the person's autonomy, breaking the person's will (the victim's will is subsumed by the will of the torturer, thus comprising a form of domination) for the purpose of obtaining a confession and/or information and to coerce the person's behavior (S. Miller 2008; Betty A. Reardon 2008; Todorov 2009). The use of torture has the following consequences, which speak to its moral unjustifiability:

- strikes at the very heart of the fundamental liberal value of individual autonomy.
- inadmissible attack on the very idea of humanity
- subverts the very idea of law and justice.
- violates the principles of noncombatant immunity and proportionality.
- violates the principle of double-effect.
- generates a tendency for a torture culture to develop in organizations in which torture is legalized or tolerated.
- negatively impacts other institutional practices and moral attitudes—has a major impact on the direction, culture, and practices of these institutions.
- increases the probability that innocent people will be tortured.
- is profoundly damaging to liberal democratic institutions.

- intensifies a culture of violence (S. Miller 2008; Betty A. Reardon 2008; Todorov 2009).

During the US Presidential administration of George W. Bush and its attempts to fight terrorists and its hunt for Osama bin Laden Department of Justice lawyer John Yoo crafted a memo to legalize and institutionalize the practice of torture by changing the definitions of torture so that clear practices of torture were *not torture. A kind of magical thinking:* we can act on things by merely changing their name: certain acts maybe inhuman or degrading, but they do not rise to the requisite intensity level of pain and suffering to be considered torture. The standard set for torture was organ failure, impairment of bodily function, death, or psychological trauma lasting months or years. Furthermore, the memo Designated terrorists as "illegal enemy combatants", thereby placing them outside of the protection of international law and the moral norms of the war convention, in particular humane treatment (Yoo 2003).

3.4.1 Summary of Jus in Bello

The principles of *jus in bello* constitute a refutation of the Realist "war is hell" doctrine in favor of limited war. War is an acute rupture of the social order but that "rupture should never be total" (Walzer 1997, 62), for the combatants and noncombatants on all sides of conflict are human beings who by virtue of their humanity possess an inherent dignity that is morally wrong to violate. Total war, a complete and terrorizing rupture of the social order, is arguably the most fundamental attack on human dignity. The use of force may be morally justified to restore a just peace, but it can never fall into total war for then it contradicts its own justification, the protection of human dignity.

3.5 Jus Post-Bellum

At the core of Just War theory is a positive moral mandate demanding the establishment of a "just peace" (Allen 2001 [1991]; Bishops 1992 [1983]; Boyle 1996; Finnis 1996; Holmes 1989; Ramsey 1961, 1983 [1968]; Turner Johnson 1981). The Just War tradition has consistently advocated for positive peace: there is no peace without justice. In fact, in the tradition justice is of higher priority than negative peace, and thus the use of force is justifiable in order to establish or protect justice (Cady 1989). Peace is an internally ordered, cooperative social condition (Cady 1989). It is a tranquility of order, a concord, and is thus based upon consensual

agreement. It is the "ideal condition of integral human fulfillment," which is built upon a just order (Finnis 1996, 17). For concord to exist there must be a significant degree of fairness, mutual respect, moral reciprocity, between individuals and societies (Holmes 1989).

As discussed in Chapter 1, a just peace is fundamentally an orderly cooperative social condition founded upon mutual respect for the inherent dignity of every human being. As discussed above, when this dignity is threatened or violated, the Just War tradition maintains that the aggrieved party has a right to protect itself and to restore a just peace and others, friends and allies, are justified in intervening to protect or restore that peace. This intervention often entails a justified use of force. The obligation to act for the protection of a just peace is founded upon a right of self-defense and an obligation to help others in need. Such a commitment to a just peace entails a duty to restore peace and justice after the conflict—this is referred to as *jus post bellum* or post-conflict justice.

Jus post bellum comprises a third dimension of just war theory. As such, it connects considerations of post-conflict justice with the basic conception of just cause as the protection and restoration of a just peace: the moral justifiability, and thereby legitimacy, of one's decision to use military force is in part (along with the criteria of *jus ad bellum)* contingent upon one's post-conflict efforts to restore or create a just peace (Bass 2004; McCready 2009; Orend 2007; Osterdahl and van Zadel 2009; Stahn 2008; Williams and Caldwell 2006). The moral justifiability of the decision to use force to protect a just peace entails an obligation to restore peace post-conflict.

Furthermore, just post-conflict efforts provide *ex post facto* validation of the moral justifiability of one's decision to use force in self-defense and the protection of others. Post-conflict justice is thus interrelated with *jus ad bellum* and *jus in bello* principles and considerations. This argument for *jus post bellum* from the perspective of *jus ad bellum* unfolds in terms of the following: If the core reason that justifies the use of force is self-defense and the protection of others (to protect and restore a just peace between and within societies), then the moral justifiability, and thereby legitimacy of one's decision to use military force is contingent upon one's post-conflict efforts to restore or create a just peace. *Jus ad bellum* and *jus post bellum are interrelated.* Post-war efforts have significant weight in the overall judgment of the war's moral justifiability, and therefore post-conflict obligations are derived from the reasons that justified the use of force. In cases of dubious original justifiability, and/or ostensible justice, just post-conflict efforts may provide *ex post facto* validation of moral justifiability.

Furthermore, *jus post bellum* can be argued for from within the perspective of *jus in bello:* The use of force must be consistent with the end

of a just peace. If the end of the justifiable use of force is the protection and/or restoration of a just peace between and/or within societies, then the justness of how force is used must be consistent with the end of a just peace. On the one hand, the justice of the use of force is in part contingent upon *how* force is used, and on the other hand, the difficulty of post-conflict efforts to restore a just peace is relative to whether force has been used justly. The basic normative foundation of *jus post bellum* moral principles is the protection and restoration of the human rights of all persons involved in the conflict. A just peace is defined as the restoration of human rights for all. From this perspective, there is an obligation to restore a just peace, and this obligation is an urgent matter of post-conflict justice.

An important aspect of post-conflict justice is holding the perpetrators of injustice accountable and achieving reconciliation as an important aspect of restoring justice (Gerson and Snauwaert 2021). One form of post-conflict justice is *retributive justice,* holding perpetrators legally accountable, including legal penalties, for their harmful actions. The Nuremberg Tribunal after World War II and the establishment of the International Court of Justice and the International Criminal Court are primary examples of institutions devoted to the enactment of retributive justice.

In further attempts to hold perpetrators legally accountable is the principle of universal jurisdiction, the idea that a national court may prosecute individuals for any serious crime against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect. Any crime against international law committed outside of a specific national jurisdiction can be prosecuted in any national jurisdiction. The following are examples of the establishment of universal jurisdiction in national law:

- New Zealand's *International Crimes and International Criminal Court Act 2000 section 8(1)(c)* provides that individuals may be prosecuted in New Zealand for war crimes and crimes against humanity regardless of "(i) the nationality or citizenship of the person accused; or (ii) whether or not any act forming part of the offence occurred in New Zealand; or (iii) whether or not the person accused was in New Zealand at the time that the act constituting the offence occurred or at the time a decision was made to charge the person with an offence."
- Canada's *Crimes Against Humanity and War Crimes Act* of 2000. For genocide, crimes against humanity, or war crimes as defined in the Act, section 9(1) provides that proceedings may commence in

any territorial division in Canada for those offenses "alleged to have been committed outside Canada for which a person may be prosecuted under this Act […], whether or not the person is in Canada."

- *§ 404* Foreign Relations Law of the United States, *Universal Jurisdiction to Define and Punish Certain Offenses*
- A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, even where none of the bases of jurisdiction indicated in § 402 is present.
- US Alien Tort Statue (1789)
- "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

Restorative justice is intended to restore the legitimacy of the rule of law and government, to restore a society in which both perpetrators and victims can cooperatively live together in the future. In this process truth-telling is prioritized over judgment and punishment. The South Africa Truth and Reconciliation Commission (TRC) is the precedent example. Restorative post-conflict justice, as exemplified by the South Africa Truth and Reconciliation Commission (TRC), expands the organization of justice beyond retributive justice. Restorative justice aspires to restore broken relationships. In a sense, the priority is to correct unjust power imbalances. An essential aspect of this restorative process is truth telling: to acknowledge the painful past, what really happened, and the imperative that the perpetrated injustices are not forgotten.

A further model of post-conflict justice is what has been identified as "reclaimative, democratizing justice" (Gerson and Snauwaert 2021). The World Tribunal on Iraq (WTI) is a prominent example. The WTI was constituted as a citizen's tribunal to hold those morally (not legally) accountable for the unjust invasion of Iraq in 2003. The WTI opened the possibility of bringing a new dimension to post-conflict justice. Seeking to democratize justice by reclaiming people's authority, a justice that is both *for* and *of* the people. Reclaimative justice, as enacted by the WTI, was an attempt to reclaim the ethical bases for just peace in Iraq. It was a reclamation of the ethical and moral foundations of justice. The ideas of reclaimative and democratizing justice, therefore, are of fundamental importance for post-conflict justice, for they pertain to the process of moral

reasoning and judgment explored in this book.

Reclaimative justice speaks to and enacts the process of moral judgment, aligning with the basic elements of justification from within the moral point of view of fairness. It suggests an important democratic dimension to post-conflict justice. The exercise of power should be based in the consent of citizens as a matter of justice. This democratic orientation is consistent with the idea of democratic normative justification, as exemplified in the dialogical dimension of moral reasoning to achieved mutual agreement under fair conditions. The WTI operationalized and instantiated this dialogical process. The enactment of reclaimative, democratizing justice within the procedures of the WTI uncovers the fundamental importance of democratic deliberation and dialogue to post-conflict justice.

4. Summary

The purpose of this chapter was to explore principles of justice that guide responses to resisting and redressing injustice, that is, to explore the principles of *corrective justice* (Mills 2016, 2018). It was argued that the principles of corrective justice are grounded in the moral duty to resist and transform injustice. The idea of corrective justice begins with and is grounded in the recognition of a right and a duty to resist and redress injustice. The right to resist injustice is grounded in the right to *dissent* based in democratic self-determination. The *duty* to resist and redress injustice is based in the following arguments:

- Respect for persons necessitates a general duty to aid those whose rights have been violated.
- The duty to do no harm entails avoiding complicity in the continuation of injustice, generating a duty to resist injustice.
- Reciprocity: One cannot justifiably claim for oneself what one would deny others, and therefore, if the rights of other citizens are violated, then one has a duty to resist that injustice and to restore their rights.

The first step in resisting injustice is identified as the exercise of critique and dissent. This exercise involves both the critical analysis of existing injustice, uncovering why and in what ways there is injustice, as well as articulating and justifying alternatives and engaging in deliberation to reach mutual agreement. Therefore, at the foundation of nonviolent resistance is the exercise of moral reasoning and judgment. Nonviolent resistance is, therefore, aimed at *conversion*, converting the opponent to a more just position. However, the opponent and the supporters of its policies will often

resist reasonable deliberation and reform—they often fail to listen to reason; therefore, they will need to be *pressured* to reconsider, deliberate, and negotiate to reach mutual agreement regarding reforms. Nonviolent resistance should be the moral default position in this effort. Given that the means of action are always interdependent with its intended ends, the resistive *force* employed must be consistent with fairness, including respect for persons, *and* the just ends it seeks to achieve.

Based on that duty, nonviolent principles, as the default position of resistance were examined. Being grounded in a duty to resist injustice it was argued that resistance to injustice is an *extension of* moral reasoning and judgment. Its aim is to engage the supporter of injustice in the exercise of moral deliberation, reason, and judgment to reach a mutually agreeable reconciliation and transformation of injustice. It does this through critique and dissent and through the employment of nonviolent direct actions to move the opposition to deliberation and negotiation. This action is centered on the withdrawal of consent in a variety of forms that follow from its basic moral principles of human dignity, respect for persons, and good will. In doing so, nonviolence aims at establishing a just society. The nature of this nonviolent resistive force can in general be understood as *noncooperation*. Power and its exercise depend upon consent. Therefore, withdrawing consent undermines the power of the opponent, shifting the balance of power in the resisters favor. Furthermore, resistance inevitably entails the suffering of the nonviolent resistor. Suffering, however, is an important power. It can awaken the moral conscience of the opponent, expose injustice, call attention to the moral rightness of the just cause, and speak to and awaken the conscience of the decent but silent majority. In turn, nonviolent direct actions include protest, noncooperation, disruption (e.g., strikes, boycotts), and civil disobedience, among other tactics. Furthermore, it was argued that the philosophical foundations and strategic elements of nonviolence render it a morally and strategically default position for resistance to injustice and its transformation. Nonviolent means of resisting injustice shapes nonviolent ends and therefore lasting peace and justice, appeals to the conscience of the opponent, seeks reconciliation rather than domination, is consistent with the fallibility of human reason, and is universally inclusive.

Nonviolent direct action is often successful in resisting and redressing the injustices of structural and cultural violence. The question of whether it can address the injustice of military aggression remains open to debate. If not, is the nonviolent default position absolute? Can the nonviolent default position ever be overridden? Can some types of injustice be only successfully resisted by violent means? Are there special circumstances that

justify the use of military force to resist the injustice of military aggression? When reasoning with the violent aggressor fails, is military resistance the only viable option? If yes, what principles of corrective justice should guide that resistance? The principles *jus ad bellum* is a means to justify the use of force in self-defense and in defense of others, including military humanitarian intervention in response to gross injustice of genocide. If military resistance to aggression is justifiable, then what principles, if any, should guide its use? The principles of *jus in bello* or the War Convention, discrimination (right to non-combatant immunity), proportionality of means (proportionate degree of harm done relative to the good achieved), and humane treatment of prisoners of war are principles to guide judgment in the actual use of military force. In turn, there is basic duty to restore peace and justice post-conflict, and the various principles and requirements of post-conflict justice, *jus post bellum,* are analyzed. The basic questions of corrective justice pertaining to the right and duty to resist injustice, including the injustice of military aggression, and thus the principles of both nonviolent and military resistance to injustice are important issues of the moral reasoning and judgment of citizens as agents of justice.

Based upon this examination of nonviolent direct action, an analysis of the basic question of whether the use of military force is justifiable in resistance to injustice, its limitations, and subsequent post-conflict obligations was explored. Just War moral reasoning and judgment posits a moral perspective that is founded upon just peace and respect for human dignity. This ethic justifies the use of force as a last resort to protect and defend peace, justice, and human rights. It thereby attempts to strike a balance between the moral imperatives of justice with the reality of injustice in the world. Its engagement with the injustice of aggression, however, is from the perspective of moral restraint. It attempts to respond to injustice in ways that are consistent with what is good and right. Just War moral reasoning and judgment is grounded in the establishment of a just peace founded upon respect for human dignity and thus a basic moral duty to resist the injustice of aggression.

5. Peace Constitution Template: Principles of Corrective Justice

1) Summarize the basic question of justice being considered: what constitute principles of corrective justice—principled resistance to injustice?
2) Alternative Principles: Discuss the alternative principles of justice, including rights and duties, that are possible answers to the basic

question and choose a set of principles of justice. What is the rational basis for justifying and affirming a duty to resist and redress injustice? What is the rational basis for justifying and affirming nonviolence as the moral default position in resisting and redressing injustice? On what basis can the determination and analysis of a nonviolent action to resist injustice be framed?

a. What is the injustice (general and/or specific) the nonviolent direct action/campaign is aimed at resisting and reforming?
b. Is resistance to that injustice justifiable?
c. What is the goal(s) of the action (instrumental and/or symbolic)?
d. In what ways, if any, does that goal(s) relate to the end reform that the campaign seeks to achieve?
e. What tactics (nonviolent direct actions) are employed to achieve the goal(s)?
f. Are those tactics morally justifiable? That is, are they consistent with the values of equality, respect for persons and reciprocity?
g. Did the opponents respond to the protestors' nonviolent actions with violence? If so, what impact did that violence have?
h. How successful was the nonviolent direct action? What factors contributed to its success or failure?
i. On what basis can the success or failure of the nonviolent direct action be assessed?

Is nonviolence as the moral default position to the resistance to injustice (including the injustice of military aggression) absolute? Or can it be overridden? If it can be overridden, what principles of corrective justice can we appeal to in order to justify it, that is, to justify the use of military force? Is a prudent calculation of self-interest—the basis of the Realist tradition—sufficient reason to override the nonviolent default position? Or does a justifiable override need to satisfy the principles of *jus ad bellum*? Is military humanitarian intervention to resist the injustice of human rights violations, in particular genocide and other crimes against humanity, justifiable as a just cause? Is the doctrine of preemption a justifiable just cause? If the use of military force is justifiable in a particular case, should its use be limited by the principles of *jus in bello*? Do the principles of *jus in bello* also limit what weapons use (e.g., nuclear weapons) can be threatened or possessed? Are there justifiable corrective principles of post-conflict justice? What is the rational basis of their justifiability? What post-conflict justice principles are most compelling?

3) Justification: Articulate a justification of choice of principles by employing the elements of fairness (equality, recognition, reciprocity, and impartiality). From the moral point of view of fairness, are the principles of nonviolence and the just war tradition justifiable? Consider also why alternative principles are unjustifiable.
   i. Equality: Does it recognize and treat all persons as equals?
   ii. Recognition: Is it consistent with respect for persons?
   iii. Reciprocity: Does it apply to all affected? Is it acceptable to all? Do reasonable persons have valid reason to reject it?
   iv. Impartiality: Does it unfairly favor anyone entity? Does it serve the common good?
4) Conclusion: Summarize your choice of principles and their justification.

SUMMARY AND CONCLUDING REFLECTIONS

The inquiry pursued in this book explores the *normative* dimension of peace studies and peace education. The normative dimension is at the core of peace studies, for peace is the *presence of justice*. Peace can be defined as a social system regulated by justifiable principles of justice and shared ethical values. Therefore, establishing and sustaining peace is understood as an urgent matter of justice. *Peace is a matter of justice*. At its foundation justice is a matter of *justification*, a matter of offering normative reasons that confirm the justifiable acceptability of principles and values of justice, rather than their mere social acceptance. In order for this justification to rest on a valid foundation, the normative validity of these basic reasons must also be confirmed. It is argued that the moral justification of principles of justice and shared ethical values cannot be effectively achieved through appeal to a *correspondence* between principles and values *and* the *cognition* of moral truths/facts, nor through social acceptance alone, but through appeal to a type of moral reasoning that that seeks *consistency* between principles and values *and* the elements of fairness. To this end, the elements of *fairness* presupposed within the basic structure of moral reasoning and/or a conception of persons as free and equal were appealed to as valid criteria/reasons for the justified acceptability of principles and values. Once the acceptability of the principles of justice and shared ethical values is justified in terms of fairness, they can serve as normative criteria to assess and justify policies, laws, practices, and social institutions. The application of principles and values to the justifiable acceptability of these considerations constitutes the *exercise of judgment.*

The significance of moral reasoning and judgment, so conceived, is based in the assumption that the pursuit of peace and justice is contingent upon the active and informed political participation of democratic citizens as dynamic agents of justice, which is the core of their *political efficacy*. It is aruged that this agency is contingent upon the development of citizens' moral reasoning and judgment capacity. This development requires a pedagogical process that *exercises* their moral reasoning and judgment capacities, a *pedagogy of moral reasoning.* These capacities cannot be transmitted but can only be developed through exercise and practice. The pedagogical approach to their development therefore proceeds on the basis of two assumptions: (1) a process-oriented, inquiry-based orientation to teaching, and (2) the logical structure of the subject matter as the teaching

focus. From this perspective, the pedagogical process mirrors the structure of moral reasoning and judgment. Therefore, this process of teaching peace as a matter of justice entails engaging students in inquiry into the justifiable acceptability of the ethical values and moral principles of justice that are possible answers to basic questions of justice—engaging them in a dynamic pedagogical process of moral reasoning and judgment in terms of fairness.

Furthermore, this pedagogical approach proceeds from the idea that justice is contextual, that principles of justice are pertinent to the specific question of justice that is being explored. In Part 2 six basic questions of justice were identified and possible answers to these questions were explored as a means of exercising moral reason and judgment:

- *Whose Security?* Who should have an equal right to security of person?
- *Who Belongs?* Who should be considered an equal citizen and thus a full participant in the society?
- *Whose Truth?* What conception of truth and thereby reality should be affirmed?
  What is the valid basis of determining truth?
- *Who Gets What?* How should the basic goods and resources of a society be distributed?
- *Who Decides?* Who should have political decision-making authority; who should have power?
- *Whose Resistance?* Is there a right and duty to resist and redress injustice? If so, what principles of corrective justice should guide that resistance? Who should bear this duty to resist?

To further explore these questions, a reflective pedagogical inquiry took the form of a *peace constitution project*. A template for articulating and justifying a set of principles of justice for each of the basic questions as well as exploring pertinent issues of justice related to each basic question, thereby applying moral reasoning and judgment, is presented to flesh out this project. However, the philosophical and pedagogical framework that is articulated in this book, including the peace constitution project, is just that, a framework, and a template. As a framework it needs further explication, especially the development of curricula that would further operationalize the peace constitution project. Interested peace education curriculum developers are invited.

In conclusion, citizens as agents of justice who possess a capacity for moral reasoning and judgment are a necessary condition for peace and justice. The fertile soil of authoritarianism, and thereby a potent threat to

peace and justice, is the irrationality and anti-intellectualism of citizens. A case in point is the rise of fascism (1920s-1930s) as a hostile, anti-democratic and unjust movement, and its embers catching fire in our own time in the form of the emergence of populist nationalism and authoritarianism in the United States, Europe, the Middle East, Asia, and South America. Fascism rests upon populism—its political base is the mass of ordinary people. As a political ideology and movement, it appeals, not to the reason of citizens, but to their emotions. "Mobilizing passions" support and feed the rise of fascism. The bulwark against this movement is a population of citizens capable of exercising moral reasoning and judgment that enables them to effectively engage in public deliberation concerning justifiable principles of justice, and who can further exercise reasoned judgment regarding laws, policies, and institutional practices and their respective enactments in the context of justice.

Therefore, as we face the many challenges ahead, the education of future democratic citizens capable of exercising moral reasoning and judgment in the pursuit of peace and justice, is of paramount and singular importance. This democratic educational process looks to bring about a paradigm shift, a transformation from unjustifiable culturally violent ideologies (such as militarism and patriarchy) that underlie the institutional structures of an unjust society, to a peace paradigm grounded in justice and fairness; a worldview that honors the equal dignity of all persons and all sentient beings. The peace paradigm focusing on the presence of justice can be seen in a larger sense to be a transformative response to systemic injustice manifesting on multiple levels of society. The goal is to make violence in all its forms largely unacceptable on multiple levels of human interaction and to bring forth the presence of justice. The changes sought are behavioral and structural/institutional, but they primarily emphasize the transformation of how we think, including the affirmation of morally justifiable values and principles of justice. The transformation of both the structures of society and the structure of consciousness comprise the central aims of this paradigm shift (Snauwaert 2019). As peace educator Betty Reardon has so powerfully stated:

> …the general purpose of peace education, as I understand it, is to promote the development of an authentic planetary consciousness that will enable us to function as global citizens and to transform the present human condition by changing the social structures and the patterns of thought that have created it. This transformational imperative must, in my view, be at the center of peace education.

> It is important to emphasize that transformation, in this context, means a profound global cultural change that affects ways of thinking, world views, values, behaviors, relationships, and the structures that make up our public order. It implies a change in the human consciousness and in human society of a dimension far greater than any other that has taken place since the emergence of the nation-state system, and perhaps since the emergence of human settlements (Reardon 2021 [1988], xxviii).

As presented in this book, through a pedagogy of teaching peace as a matter of justice, citizens who possess a capacity for moral reasoning and judgment can act as dynamic and informed agents of justice. Awakening to realize that our personal and collective experiences on this planet exist within an interdependent web of relationships, leads to the inclusion of the natural world in the moral community. This perspective of deep equality and the need for care, justice, and respect for the dignity of all persons, and all life, is certainly a necessary condition for the creation of a peaceful and just world.

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INDEX

Acemoglu, Daron, 4, 147-149, 152, 153, 205
Ackerman, Peter, 171, 175, 178, 205
Agape, 168
Al-Daraweesh, Fuad, 34, 113, 205
Alien Tort Statue, US, 195
Allen, Danielle, 169, 205
Allen, Joseph L., 177, 181, 182, 184-187, 192
Alonso, Sonia, 96, 205
Amar, Akhil Reed, 39, 59, 151, 152, 205
Anarchy, 34, 77-79, 86, 87, 147, 217
Anderson, James D., 21, 96, 205
Andreopoulos, G. J., 101, 206
Anscombe, Elizabeth, 177, 185, 206
Aquinas, Thomas, 43, 114
Arendt, Hannah, 6, 30, 31, 60, 61, 64, 72, 153, 155-157, 161, 202, 221
Aristotle, 42, 43, 53, 103, 114, 133, 134, 206, 217
Armstrong, Chris, 139, 140, 142, 206
Audi, Robert, 15, 16, 206
Authoritarianism, xiv, 114, 123, 124, 154, 161, 162, 202, 203, 223

Baier, Kurt, 3, 5, 39, 40, 46, 48, 52, 53, 59, 63, 64, 206
Banality of evil, x, 154, 155, 156, 158, 206,
Bartkowski, Maciej, 175, 178, 206
Basic Law of Governance of Saudi Arabia, 97
Bass, Gary J., 193, 206
Bass, Charles R., 39, 80, 206
Bell, Derrick A. Jr., 103, 171, 206
Ben-Ghiat, Ruth, 123, 154, 158, 161, 206
Bentham, Jeremy, 132
Berlin, Isaiah, 29, 207
Besley, Tina, 101, 218
Bias, 20, 21, 48, 58, 59, 93-95, 99, 117, 119, 120, 122, 123, 160
confirmation bias, 112, 116, 123
conformity bias, 116, 123
identity protective bias, 116
in-group bias, 93-95, 98, 108, 113, 158
weaponization of, 122, 123, 124, 160, *see also* Propaganda
Bill of Rights, 151, 152, 205
Bishops, U.S. Catholic, 177, 181, 182, 185, 186, 187, 192, 207
Black Lives Matter, 175, 226
Bobbio, Norberto, 25, 26, 29, 32, 33, 89, 207
Bohman, James, 215, 217
Bondurant, Joan V., 171, 172, 174, 207
Boyle, Joseph, 177, 181, 182, 186, 192, 207
Braarvig, Jens, 209, 218
Brandon, Terry M., 169, 205, 208, 211, 215, 222, 225
Brewer, Marilynn B., 93, 94, 95, 113, 207
Brookings Institution, 95, 219
Brown, Chris, 34, 77, 78, 79, 180, 207
Brown, Michael E., 85, 207
Brown, Wendy, 19, 60, 207
Brown v. Board of Education, 21, 206

Brownlee, Kimberley, 174, 207
Brownsword, Roger, 209, 218
Brune, J. P., 49, 63, 207
Bruner, Jerome, 8, 68, 70, 207
Buber, Martin, 55, 169, 207, 210
I-It relationship, 169
I-Thou relationship, 55, 169
Buergentahl, Thomas, 29, 207
Buffachi, Vittorio, 15, 206, 207, 215
Bull, Hedley, 35, 82, 84, 207
Burdens of judgment, 115-116, 122, 160
Bush doctrine of preemption, 183
Bush, George W., 183, 192, 207

Cady, Duane L., 77, 80, 177, 182, 185, 186, 187, 192, 207
Caldwell, Dan, 193, 225
Canada's Crimes Against Humanity and War Crimes Act, 194
Capabilities, 4, 53, 65, 103, 127, 133, 134, 144, 217, 218
architectonic, 134
combined capabilities, 135
combined index of, 144
internal capabilities, 135
Capabilities Theory, 132-135, 144
Carney, Simon, 211
Carr, Caleb, 80, 188, 208
Cartwright, Michael G., 177, 208
Chenoweth, Erica, 174, 175, 176, 178, 208
Chinese Exclusion Act of 1882, 96
Chomsky, Noam, 5, 154, 208
Christian nationalists, 95
Citizenship and citizens, 3, 9, 28, 34, 35, 39, 54, 58, 60, 62, 65, 67, 69, 70, 75, 79, 80, 82, 88, 92, 95, 96, 97, 101, 105, 106, 107, 108, 109, 110, 126, 127, 128, 131, 138, 139, 146, 147, 148, 150, 151, 154, 161, 165, 173, 179, 180, 182, 185, 186, 188, 194, 196, 215, 226
citizens as agents of justice, 1, 3, 67, 165, 170, 198, 201, 202
citizens' tribunal, 195
education of, 2, 6, 7, 67, 203, 204, 205
equal standing, 8, 102, 104, 105, 107, 108, 121, 202
ethical identity standard of membership, 97-99
ethno-nationalist standard of membership, 95-97, 158, 159
irrationality, 5, 154, 203
naturalized, 96, 97, 101, *see also* Immigration
political efficacy and empowerment of citizens, xiii, 2-5,11, 20, 31, 126, 131, 144, 149, 150, 151, 152, 161, 162, 166, 196
reconciliation, 3-5, 23, 36, 39, 57
right to citizenship, 100, 101, 102
right to emigration, 100
truth and knowledge, 114, 120, 121, 123
Civil discourse, 159
Clark, Amanda D., 175, 208
Clash of Civilizations, 85, 213
Climate change, 16, 141–142
Coleman, Peter T., 93, 208
Communitarianism, ix, 47, 99, 132, 135, 210
Constitution of knowledge, ix, xii, 118–122, 124–125, 160, 219
Constitutional choice, 38, 146–147
Corrective justice, x–xi, 9, 11–12, 69, 75, 163–165, 167, 169, 171, 173, 175–177, 179, 181, 183, 185, 187, 189, 191, 193, 195–199, 202
Cosmopolitan, xii, 67, 76, 85, 89, 139, 215, 217, 222
Coy, Patrick G., 175, 208
Cranston, Maurice, 29, 208
Crenshaw, Kimberlé, 103, 171, 208
Crime of aggression, 82–83, 179, 181
Critical scrutiny, 63, 111, 117–122, 124, 160

Cultural recognition, ix, 105–106, 108–109

Dahl, Robert, 5, 88, 154, 208
Dalai-Lama, 177, 224
Darby, Derrick, 169, 208
Daza Sierra, Felip, 174, 178, 208
Declaration of Independence, 28, 38, 146, 165, 214
Delgado, Richard, 103, 171, 20
Democracy, x, xii–xiii, 3, 5, 11, 38, 50, 80, 84–85, 88–89, 98–99, 106, 146, 149, 151, 153–154, 158, 161–162, 165–166, 205, 208–212, 216–217, 219–220, 222
government by consent, 85, 88, 151, 162, 165–166
right to dissent, 165–166, 196
threats to, ix–x, xiii, 1, 24, 83, 89, 121, 154, 181
Dewey, John, viii, 5, 8, 65–68, 70, 118–119, 139, 142, 152–154, 208
Diamond, Larry, 154, 158, 209
Difference principle, 128–129, 133
Distributive equality, 126, 144
Distributive justice, ix–x, 10–11, 105, 126–128, 130–132, 135, 137–144, 206
Doyle, Michael W., 77–78, 85, 209
Duties, vii, 7, 10, 15, 23–28, 35–36, 39, 44, 68–69, 72, 77, 84, 88, 91, 109, 124, 138–140, 142, 144, 162, 164–166, 168, 187, 198, 213, 221
Düwell, Marcus, 29, 53, 209, 218

Egan, Eileen, 177, 209
Eichmann, Adolf, 6, 155–158, 206
Engler, Mark, 175, 209
Engler, Paul, 175, 209
Environmental Ethics, 212, 215, 221, 224–225
Environmental Justice, 126, 142, 144, 223

Epistemological, ix, 114–117, 120, 122, 124, 160
certainty, ix, 114–117, 172, 186
disconfirmation, 117–119
falsification, 117, 119
Equality, viii, 5, 11, 21, 30, 35, 50, 52–54, 56–57, 60, 64, 72, 77, 82–89, 91–92, 97, 102–105, 109, 120, 125–126, 128–130, 133, 136–137, 144–146, 149, 161–162, 167–168, 170, 187, 199–200, 204, 216, 225
Equal Protection Clause 14th Amendment, 21, 104
Ethno-Nationalism, viii, 92, 95–97, 100–101, 109

Fairness, elements of:
equality, viii, 5, 11, 21, 30, 35, 50, 52–54, 56–57, 60, 64, 72, 77, 82–89, 91–92, 97, 102–105, 109, 120, 125–126, 128–130, 133, 136–137, 144–146, 149, 161–162, 167–168, 170, 187, 199–200, 204, 216, 225
impartiality, viii, 11, 22, 51–52, 56, 58–59, 64, 72, 77, 80–81, 91–92, 97–98, 109, 120, 125, 145–146, 149, 161–162, 164, 167, 200
reciprocity, viii, 11, 22, 46, 51–52, 55–59, 64, 72, 77, 80–81, 87, 91–92, 98, 109, 120, 125, 128, 134, 145–146, 149, 161–162, 164, 167–169, 193, 196, 199–200
recognition, viii–ix, xiv, 11, 22, 35, 46, 48, 52, 54–57, 64, 72, 77, 80, 82, 88, 91–93, 97–99, 102–109, 111, 119–121, 125, 143, 145–146, 149–150, 161–162, 164, 167–168, 187, 196, 200, 211, 213, 224
Fair equality of educational opportunity, 129
Falk, Richard A., 25, 32, 209

Fandos, Nicholas, 96, 221
Fanon, Frantz, 104, 169, 209
Fascism, 5–6, 154–155, 161, 203, 218, 223
  mobilizing passions of, 6, 155, 203
Fasting, Mathilde C., 53, 103, 210
Federalist Papers, 38, 59, 146, 212
Feinberg, Joel, 26, 209
Feldman, Noah, 82, 209
Felice, William F., 32, 209
Finnis, John, 25, 177, 181–182, 186, 192–193, 209
Fonseca, Saro Claro da, 96, 205
Ford, John C., 184–185, 188, 209
Foreign Relations Law of the United States, Universal Jurisdiction, 195
Fornari, Franco, 56, 21
Forst, Rainer, 3, 5, 17, 19, 31, 39–40, 46, 48, 50, 57–64, 70–71, 98, 107, 111, 121, 149–151, 173, 210
Freire, Paulo, viii, xii, 5, 8, 65–67, 154, 210, 223
Friedman, Maurice, 55, 210
Frum, David, 20, 122, 154, 160, 210
Fukuyama, Francis, 53–54, 56, 93, 103–104, 158, 210, 213, 215, 221

Galtung, Johan, 2, 7, 14–17, 19–20, 23, 36, 63, 111, 210
Gandhi, M. K., x, 167–168, 170–171, 175, 179, 209, 213–214, 217
Gardiner, Stephen Mark, 142, 211
Gender differentiation, 22
Gersimov, Valery, 123
Gerson, Janet, xii, xiv, 194–195, 211
Gessen, Masha, 5, 61, 154, 158, 161, 211
Gingrich, Newt, 159
Global Campaign for Peace Education, xiii, 223
Global distributive justice, 10, 126, 139, 142, 206
Global Society, viii, 7, 36, 88, 90–91, 162
Glover, Jonathan, 25, 190, 211
Gooding-Williams, Robert, 167, 211
Gotanda, Neil, 208
Gramsci, Antonio, 21, 211
Granoff, Jonathan, 189, 211
Grayling, A. C., 149, 211
Gutman, Roy, 188, 211
Gutmann, Amy, 5–6, 21, 25, 32–33, 58, 84, 89, 154, 211, 213, 224–225

Habermas, Jürgen, 40–41, 48–50, 57–58, 60–64, 71, 105–106, 150, 210–212
Hadot, Pierre, 42, 114, 212
Hallward, Maia Carter, 171, 208, 212
Hamilton, Alexander, 38, 59, 146–147, 152, 212
Hans, Asha, 23, 157, 220–221, 223
Hargrove, Eugene C., 142–143, 212
Harris, Tristan, 123, 212
Hart, H. L. A., 29, 33, 212
Hashmi, Sohail H., 177, 212
Hegel, G. H., 3, 39, 54, 56, 77, 212, 215, 219, 226
  master/slave relationship, 53, 56, 103
Held, David, 4, 35, 88–89, 95, 99, 163, 165, 212, 219, 226
Hermeneutics, 205, 226
Hett, Benjamin Carter, 5, 154–155, 158, 160, 21
Hinsley, F. H., 34–35, 77–79, 88, 212
Hipsman, Faye, 96, 212
Hirst, Paul H., 42, 114, 212
Hitler, Adolf, 160, 212, 225
Hobbes, Thomas, 28, 77, 147–148, 165, 212
Hobbesian state of nature, 77–78

Hoffman, Stanley, 35, 82, 87–89, 182, 184–185, 208, 213
Holmes, Robert L., 177, 181–182, 185–187, 192–193, 213, 215, 221
Honneth, Axel, 50, 54–55, 213, 226
Human Development Report, 89, 224
Human dignity, 31, 53, 133–134, 143, 164, 167–168, 176, 182, 187–188, 192, 197–198, 209, 218
Human rights, *see* Rights
Human security, 89–91, 220
Humane treatment of soldiers and prisoners of war, 191
Humanitarian intervention, x, 182, 198–199
Hume, David, 54, 115, 213
Huntington, Samuel P., 46, 86, 213

Ideological hegemony, 20
Ideology, 5, 20–21, 122, 154–155, 160, 203
Ignatieff, Michael, 25–26, 29, 89, 213
Immigration, ix, 10, 96–97, 100–101, 108–109, 205, 212, 225
Immigration Act of 1917, 96
Immigration and Naturalization Act of 1924, 96
Immigration and Nationality Act of 1952, 96
Induction, the problem of, 115, 117, 203, 213, 218, 221
In-group bias and out-group hostility, 93-95, 98, 108, 113, 158
Injustice, x, xiv–2, 9, 11–12, 15, 17–18, 22, 28, 42, 56, 66, 69, 75, 82, 102, 110, 136–137, 140–141, 149, 163–179, 181, 183–187, 189, 191, 193–199, 202–203
defined as an invasion or domination, 137
duty of resistance to, 167
nonviolence as default position, 12, 164, 176, 181, 186, 197, 199
Interest convergence, 103, 171
International Commission on Intervention and State Sovereignty, 213
International Criminal Court (ICC), 82-83, 194, 213
International society, viii, 7, 9, 34–36, 76–77, 81–82, 84, 86, 88–91, 104, 216
Intersectionality, 103
Isothymia, 54, 56, 93, 98
Iyer, Raghavan, 171–172, 174, 177, 213

Jaeger, Werner, 42, 114, 213
Jamieson, Dale , 211
Jay, John, 38, 147, 152, 212
Jefferson, Thomas, 38, 146–147, 152, 165–166, 214
Jervis, Robert, 78, 214
Jim Crow, 21
Johnston, David, 38, 53, 103, 146, 214
Jones, Charles, 25–27, 29, 33, 85, 164–165, 214
Jones, Dorothy V., 82, 214
Judgment, viii, xiv–3, 5–6, 8–9, 12, 49, 59–73, 75, 115–116, 122, 154, 157–158, 160–162, 170–172, 175, 179, 181, 193, 195–198, 201–204, 206, 221, 225
Jus ad bellum, x–xi, 12, 179–182, 185–187, 193, 198–199
just cause, x, 181–186, 193, 197, 199
reasonable hope of success, x, 181, 185
right authority, x, 181, 183–184
right intention, x, 181, 184–185
proportionality of ends, x, 185
last resort, x, 181, 185–186, 198
Jus in bello, xi, 12, 180, 185, 187–189, 192–193, 198–199

principle of proportionality, 185
principle of discrimination, 188
noncombatant immunity, 188, 191
Jus post bellum, 12, 193–194, 198, 206, 216, 218, 223, 225
Just war tradition, 181–182, 192–193, 200, 216, 224
Justice, i, iii–iv, vii–3, 5–15, 17, 21, 23–26, 28, 31, 34–36, 38–43, 45, 47–53, 55, 57, 59–65, 67–73, 75, 77, 81–85, 87, 90–92, 98, 101, 103, 105, 107–112, 118, 121, 124, 126–144, 146–151, 154, 158, 161–177, 179, 181, 183, 185, 187–189, 191–199, 201–207, 209–211, 213–223, 225–226
basic questions of, viii, 1–3, 7–9, 34, 36, 68–73, 75, 198, 202
who belongs?, viii–ix, 8–9, 69, 75, 92–93, 95, 97, 99, 101–103, 105, 107–109, 202
who decides?, x, 8, 11, 69, 75, 146–147, 149, 151, 153, 155, 157, 159, 161–162, 202
who gets what?, ix–x, 8, 10, 69, 75, 126–127, 129, 131, 133, 135, 137, 139, 141, 143–145, 202
whose resistance?, 9, 11, 69, 75, 163, 202
whose security?, viii, 8–9, 69, 75–77, 79, 81, 83, 85, 87, 89–91, 202
whose truth?, ix, 8, 69, 75, 110–111, 113, 115, 117, 119, 121, 123–125, 202
corrective justice, x–xi, 9, 11–12, 69, 75, 163–165, 167, 169, 171, 173, 175–177,179, 181, 183, 185, 187, 189, 191, 193, 195–199, 202
distributive justice, ix–x, 10–11, 105, 126–128, 130–132, 135, 137–144, 206
institutional perspective, 4
nonideal theory, 12, 163–164
retributive justice, 194–195
scope of, ix–x, 7, 9–11, 34–36, 40, 85, 126, 138–144, 223
egalitarian, ix, 92, 102, 104, 136, 140
minimalist, 140
common relationship standard, ix, 139
common humanity and universal rights standard, x, 140
distributive obligations, x, 140
Justice as Fairness, ix, 52, 128, 135, 219–220

Kakutani, Michiko, 154, 161, 214
Kant, Immanuel, vii, 35, 41, 43–45, 48–49, 53–55, 60, 81, 85, 88–89, 130, 157, 167, 170, 206, 214–215, 217, 219
Kasparov, Garry, 161
Keen, Sam, 56, 214
Kendi, Ibram X., 21-22, 214
Keohane, R. O., 78, 214
King, Martin Luther, 21, 166–172, 175, 205, 208, 211, 214-216, 222, 225
King, Mary, 168, 171, 214
Klein, Ezra, 47, 92–95, 113, 116, 214
Kohn, Jerome, 157, 206
Kojeve, Alexandre, 56, 215
Koontz, Theodore J., 177, 215
Kruegler, Christopher, 171, 175, 178, 205
Kuwait, 97
Kymlicka, Will, 52, 105, 132, 215

Lawson, James, 175
Letter from a Birmingham City Jail, 171
Leviathan, 4, 77, 147–148, 152, 212
Levitsky, Steven, 154, 158, 160, 215
Lewis, John, 175
Liberty, vii, 4–5, 11, 16, 29–33, 35, 38, 76, 82, 88, 98, 100, 106, 120, 128–130, 134–135, 144,

146, 152, 162, 166, 176, 205, 207, 216
corridor of, 4–5, 11, 144
counter-extractive liberty, 32
fair value of, 32, 128-130, 134-135, 170
negative liberty, 29-30, 33, 88, 128
positive liberty, 29-31, 33, 88, 128, 162,
Libertarian theory of distributive justice, ix, 130, 144
Lieberman, Robert C., 8, 92, 123, 154, 158–159, 216
Light, Andrew, xiv, 24, 122, 142–143, 150, 163, 173, 215
Logical structure of disciplines, viii, 8, 68, 70-71, 73, 118, 201
London, Jonathan K., 142, 205–208, 210–212, 216, 218–219, 223–224, 226
Lopez, George A., 1, 215
Lutz-Bachmann, 85, 215, 217
Lynn-Jones, Sean M., 85, 207

MacCallum, Gerald C., 15, 215
Macintyre, Alasdair, 46–47, 99, 215
Macpherson, C. B., 30, 32, 215
Madison, James, 38, 59, 147, 152, 212
Mantena, Karuna, 171–172, 215
Mapel, David R., 35, 80, 82, 215–217
Maritain, Jacques, 25, 29, 32–33, 216
Mason, Lilliana, 93–94, 99, 116, 158–159, 216
Matsuo, Masatugu, 14, 34, 216
Maximization of aggregative utility, 132
May, Todd, iv, xiv, 3–4, 15–16, 24, 36, 49–51, 80–82, 87, 97, 100, 107, 111–112, 115–116, 119, 124, 126–127, 129–130, 135, 137, 139, 143, 151–152, 156, 165, 171, 178–179, 181, 185, 189, 191–195, 216
McCready, 193, 216
McIntyre, Lee, 116, 122, 160, 216
McMahan, Jeff, 80, 216
Megalothymia, 56, 93, 102, 104, 108, 158
Meissner, Doris, 96, 212
Methods of settling beliefs/truth, 10, 111, 123
tenacity, ix, 10, 111–112, 124–125
social acceptance, vii, ix, 7, 10, 40–41, 43, 46–48, 111–114, 118, 124–125, 201
authority of Truth, 114
science, 10, 20, 111–112, 117–118, 121–122, 124–125, 160
Mettler, Suzanne, 8, 92, 123, 154, 158–159, 216
Mieth, Dietmar, 209, 218
Mill, James, 132
Mill, John Stuart, 29, 82, 132, 216
Miller, Alice, 56, 216
Miller, Seumas, 85, 99, 135, 191–192, 207, 212, 216, 225
Miller, Steven E., 47
Mills, Charles W., 11, 66, 163, 196, 216
Militarism, 20, 22, 148, 154, 203
Minimal State, 131
Moller Okin, Susan, 32, 216
Moral duty to do no harm, 82, 164, 176, 196
Moral reasoning, iii–iv, vii–viii, xiv–3, 5–9, 12–13, 38, 40–41, 46, 48–52, 54–57, 60, 63–65, 67–73, 75, 93, 98, 119, 121, 124, 154, 157–158, 161, 170–171, 175, 179, 187, 196–198, 201–204
moral constructionism, 50-51, 63
presuppositions of, 7, 40-41, 49-51, 63-64, 80
Moral truth, cognition of, vii, 41-45, 50, 201
Moses, Greg, 171, 216
Motivated reasoning, 115–116
Müller, Jan-Werner, 154, 216

Muller, Jean-Marie, 171, 174, 217
Multiculturalism, 211, 224–225

Naess, Arne, 28, 167–168, 171–172, 217
Nagel, Thomas, 163–164, 217
Nance, Malcom, 123, 154, 217
Nardin, Terry, 35, 80, 82, 84, 207–209, 212, 215–217, 224
Narveson, Jan, 177, 217
Nash, Diane, 175
National Security Strategy of the United States, 217
Nationalism, viii, 20, 92, 95–97, 100–101, 103, 109, 155, 159, 203, 219
NATO, 82, 189
Naturalization, 96–97, 102
Nazi Germany, 97, 190
Nazi legal system, 97
New Zealand's International Crimes and International Criminal Court Act 2000, 194
Nickel, James W., 29, 217
Nonintervention, principle of, 35, 57, 81-82, 84, 86-89, 91, 181-183
Nonviolence, x, 2, 12, 168, 171–172, 175–177,179, 197, 199–200, 208–209, 212, 214–217, 222
absolute nonviolence (Pacifism), *x, 177*
civil disobedience, 174–175, 197, 207
default position, as, 12, 164, 176, 181, 186, 197, 199
Indian independence movement, 175
means-ends argument for nonviolence, x, 172
moral creed, as, 177
noncooperation, x, 164, 166, 172–174, 178,
197
nonviolent direct action, x, 12, 171, 173–174,176, 197–199
nonviolent resistance as conversion, 171, 191
nonviolent resistance as moral reasoning, 171, 175, 196-197
Palestinian Intifada, 175
Policy, as, 177-178
power of suffering, x, 173, 175
protests, 174, 178
women's suffrage movement, 175
student sit-ins in Nashville, 175, 208
withdrawal of consent, x, 172–175, 197
Ukrainian Nonviolent Civilian Defense, 178
Norman, Julie, 171, 208, 212
Normative Justification, vii–viii, 2, 7–8, 38–41, 43–49, 51–55, 57, 59–61, 63, 70–71, 124, 196
approaches to, vii, 7, 11, 40, 126, 140, 144
basic structure of justification, 151
categorical imperative procedure, vii, 44-46
cognition of moral truth, 41-43
coherence or consistency arguments, 64
criteria of, vii, 40, 52, 60
deontological orientation, 127
discourse ethics, principles U and D, 57
justified acceptability, 2, 36, 48–50, 201
principle of general and reciprocal justification, 57, 61
realization arguments, 64
reasonable rejectability, principle of, 101, 167
social acceptance, vii, ix, 7, 10, 40–41, 43,
46–48, 111–114, 118, 124–125, 201
teleological orientation, 127
Normative political theory, 39
Nozick, Robert, ix, 128, 130–131, 217

Nuclear weapons, 188–190, 199, 211, 224
doctrine of nuclear deterrence, 188
possession of nuclear weapons, 189
Treaty on the Prohibition of Nuclear Weapons (TPNW), 189–190, 224
use of nuclear weapons, 188–190
Nuremberg Tribunal, 194
Nussbaum, Martha, ix, xii, 32, 34–35, 43, 50, 88–89, 132–135, 167, 217, 223
Nye, Joseph, 78, 214

Objective illusions, 113
Obliteration bombing, 188, 209
Olafson, Frederick A., 41–44, 218
Oppression, 11–12, 17–18, 22, 66, 101, 109, 144, 148, 151, 168–170, 179, 185, 226
definition of, 18
five types of:
exploitation, 18
marginalization, 18
powerlessness, 18-19
cultural imperialism, 18
violence, 19
Orend, Brian, 135, 193, 218
Original Position, 51–52
Orlowski, Jeff, 123, 218
Osterdahl, Inger, 193, 218
Otero, Carlos, 5, 154, 208

Pacifism, 177, 207–208, 217
Parker, Theodore, 170, 218
Patriarchy, 20–23, 103, 154, 203
Paxton, Robert O., 5, 154–155, 158–159, 218
Peace, i, iii–iv, vii–3, 5–9, 11–17, 19, 21, 23–25, 27, 29, 31, 33–37, 64–65, 67–73, 75–76, 78, 83–86, 89–91, 98, 109–111, 124, 126, 143–144, 148, 154, 162, 176, 180–182, 184–187, 192–195, 197–198, 201–204, 207–217, 219–225
as the presence of justice, vii, xiv, 27, 14, 23, 36, 201, 203
concept of, vii, 2, 7, 14-15, 17 ,19, 21, 23, 25, 27, 29-31, 33, 35-37, 44, 52, 54, 68, 89, 104, 106, 155, 216, 221
democratic peace, viii, 84, 86, 207, 220-221
negative peace, 7, 14, 23-24, 36, 78, 192
perpetual peace, 85, 214-215, 217
positive peace, 5, 7, 11, 14-15, 23, 36, 126, 144, 192
social good, 1, 70, 136-137
spheres of, vii, ix, 7, 14, 34, 132, 135, 225
Peace Constitution Project, vii-xi, 9, 69, 72-73, 90-91, 109, 124, 144, 162, 198, 202,
Peace education, xii–xiii, 1, 67, 201–203, 220, 223
Peace studies, iv, viii, xii, 1, 68, 70–71, 201, 215–216
Pedagogy, iii–iv, viii, xiii–xiv, 2, 6, 8-9, 65–69, 71, 73, 75, 86, 201, 204, 210, 220, 223
critical pedagogy, 66
dialogical, 66,
inquiry-based, 8, 65-68
of moral reasoning, viii, 65, 68-69, 75, 201
process-oriented, 65-68
problem-posing, 66-67
reflective inquiry, 67-68
Peirce, Charles Sanders, 10, 111–112, 115, 117–118, 123–124, 218
Peller, Gary, 208
Perry, Michael J., 25–26, 29, 32–33, 21
Peters, Michael A., 101, 218
Peters, R. S., 40, 49, 212,
Plato, 42, 110, 114, 116, 149, 157, 216, 218, 223, 225
Political asylum, ix, 101–102, 108–109, 218

Political education, 6
Political legitimacy, x, 5, 149, 151, 173, 184
Political philosophy, vii, 1–5, 24, 135, 205–206, 208, 210–211, 215, 220, 222, 225
Political polarization, x, 123, 154, 158–159, 161–162, 208
Political power, xiv, 5, 8, 11, 19, 34, 60, 116–117, 122, 146–150, 153, 158, 160–162, 173
Pogge, Thomas, 24, 28, 139–140, 165, 218
Popper, Karl Raimund, 113, 117, 219
Populism, 5, 154, 203
Post-conflict justice, 193–196, 198–199, 211
Post-Truth, x, xii, 122-124, 154, 160-162, 216
Propaganda, ix, 56, 121–122, 160–161
Positional confinement, 113
Poverty, 113, 139-143
Power, x, xiv, 4–5, 8, 11, 17–19, 22, 31–32, 34–35, 38, 51, 53, 60, 63, 67, 69, 75, 77–80, 84–86, 90–91, 103–104, 107, 110–111, 114, 116–117, 120–123, 146–153, 158–162, 165–166, 168–171, 173–175, 177–180, 184, 195–197, 202, 205, 210, 212, 214
  arbitrary power, 149, 173
as knowledge, 110-111, 114
command-obedience, 53, 103, 148, 153
consensual, 11, 146, 150, 153, 161
see also political power
Practical reason, 41, 134, 157
Principle of each person's capability, 134
Principle of humanity as an end in itself, 45, 53, 134
Priority of right, 127, 131, 138
Propaganda, ix, 56, 121–122, 160–161
Public deliberation, 20, 61–62, 122, 138, 153, 159–160, 203
Public justification, viii, 60–63
Public Religion Research Institute, 95, 219
Pure procedural justice, 50

Qatar, 97
Quran, 97

Racial justice, 103, 216
Ramsborth, Oliver, 182, 184, 187, 219
Rational intuitionism, ix, 41, 114, 116, 124–12
Rauch, Jonathan, 10, 42, 110–112, 114, 117–119, 124, 219
Rawls, John, ix, 2–5, 14, 24, 31–32, 39–41, 46, 48, 50–52, 54, 57–58, 60, 62–64, 71, 81, 99, 115–116, 127–132, 134–135, 137–138, 140, 144, 149–151, 154, 157, 163–167, 170, 173, 210–212, 217–221
Ray, James Lee, 85, 220
Ray, Victor, 103, 171, 220
Reardon, Betty A., v, vii–viii, xii–xiv, 2, 8, 15, 22–23, 65, 67, 89–90, 191–192, 203–204, 220–221, 223
Reclaimative, democratizing justice, 195–196
Reconciliation, vii, 2–5, 65, 171–172, 174–176, 194–195, 197, 211
Red Queen effect, 4
Reflective equilibrium, 51
Reichenbach, Hans, 115, 221
Respect for persons, 26, 31, 54–55, 72, 84, 91, 97, 105, 107, 109, 121, 125, 127, 130–131, 134, 138, 140, 142–143, 145, 150, 162, 167–168, 170–171, 176, 196–197, 199–200

Responsibility to Protect (R2P), 28, 182
Restorative justice, 194-195
Ricks, Thomas E., 171, 174–175, 221
Rieff, David, 211
Rights, iv, vii, x, xii, xiv, 2, 7, 9–10, 15–16, 18, 21, 23–36, 39, 58, 68–70, 72, 76–79, 81, 84–92, 98–100, 102, 105–109, 112, 120–121, 124, 128–130, 138–140, 142, 144, 150–152, 161–162, 164–170, 174–176, 178, 181–182, 185–188, 194, 196, 198–199, 205, 207–209, 211–213, 216–218, 220–222, 224–225
basic right to justification, 31, 62, 150–151
basic rights, 10, 18, 26, 33, 88, 106, 112, 124,
128–130, 138, 151, 161, 168, 222
content of, vii, 7, 10, 14, 29–30, 34, 36, 55,
107, 127, 144
liberty, vii, 4–5, 11, 16, 29–33, 35, 38, 76, 82,
88, 98, 100, 106, 120, 128–130, 134–135,
144, 146, 152, 162, 166, 176, 205, 207, 216
security of person, viii, 8–9, 23–24, 27–28,
30, 35, 69, 75–77, 88, 90–91, 165, 176,
202
self-determination, 16, 30–33, 35, 44, 55, 79,
81–82, 85–88, 100, 108, 129, 161, 196
social and economic rights, vii, xiv, 29, 32–33
definition of, 23, 25, 188
human right to emigration, 100
right to dissent, 165–166, 196
Robinson, James A., 4, 147–149, 152–153, 205
Rodowick, D.N., 61, 65, 68, 221
Rogers, Katie, 96, 221
Rolston, Holmes, 142–143, 215, 221
Rome Statute of the International Criminal Court, 82–83, 213
Russett, Bruce, 85, 221
Russian aggression, 178

Sachs, Jeffery D., 141–142, 221, 223
Sandel, Michael, J., 46–47, 99, 221
Satyagraha, 168, 217
Scanlon, Thomas, 31, 46, 48, 57, 60, 63, 71, 149–150, 157, 173, 221
Scheffler, Israel, 5, 40, 63, 70, 154, 221
Schlesinger, Arthur, 98, 221
Schmitt, Carl, 159, 221
Self-ownership, 130
Sen, Amartya, ix, xii, 3, 5, 32, 51, 59, 64, 113, 132–134, 154, 167, 221, 223
Shafir, Gershon, 105, 215, 222, 226
Sharp, Gene, 35, 88, 153, 173–175, 178, 222
Shelby, Tommie, 169, 171, 205, 208, 211, 215, 222, 225
Sherif, Muzafer, 93–94, 222
Shue, Henry, 26–27, 30, 32–33, 81, 87–88, 164, 211, 222
Sidgwick, Henry, 132
Singer, Peter, 5, 40, 52, 58, 63, 132, 222
Smith, Michael Joseph, 54, 77–78, 214, 222
Snauwaert, Dale T., iii–iv, xiii–xiv, 2, 6, 15, 22, 31, 34, 38, 52, 67, 88, 90, 113, 133, 141, 143, 155, 183, 194–195, 203, 205, 211, 220–222
Snyder, Timothy, 20, 122–123, 154, 160–161, 223
Social Group Belonging, viii, 46–47, 93, 108

South Africa Truth and Reconciliation Commission (TRC), 195
Sovereignty, 16, 28, 35, 76–77, 79, 81–84, 88–89, 91, 100–101, 123, 176, 181–184, 212–213
Spheres of Justice, ix, 132, 135, 225
Stahn, Carsten, 193, 223
Standing, ix, 9–10, 22–23, 25, 30, 35, 51–53, 55, 69, 77, 84, 92–93, 97–100, 102–105 107–109, 113, 120, 133, 136–137, 143
Stanley, Jason, 5, 20, 122, 154, 158–160, 213, 223
Stefancic, Jean, 103, 171, 208
Stephan, Maria J., 174–176, 178, 208
Stern, Robert, 49, 63, 207, 223
Sunna, 97
Sunstein, Cass R., 154, 223
Supreme emergency, 191
Sustainable development, 141–142, 221, 223
planetary boundaries, 141–142
Sustainable Development Goals (SDGs), 141
Sze, Julie, 142, 223

Tajfel, Henri, 93–95, 113, 158, 224
Taylor, Charles, 46–47, 93, 95, 105, 113, 224
Taylor, Paul W., 143, 224
Teleological centers of life, 143
Terrorism, 183, 188, 195, 208
Thinking, 3, 38, 40, 46, 48, 57, 67, 72, 118, 122, 137, 139, 157, 160–161, 182, 189, 192, 204, 207, 225–226
Thomas, Kendall, 38, 43, 46, 48, 57, 139, 146–147, 152, 163, 165, 207–208, 212, 214–215, 217-218, 221
Thucydides, 77, 80, 148, 224
Thymos, 54, 93, 158
Tibi, Bassam, 177, 224
Tillich, Paul, 56, 224
Todorov, Tzvetan, 191–192, 224
Toleration, ix, 107–109, 121, 124, 159, 210
Torture, 16, 30, 191–192, 194, 216, 220, 224
Tozer, Steven, 21, 224
Transitivity Principle, 32
Tribalism, 94, 98, 104, 107–108, 122–124, 158, 160
Tribe, Laurence H., 39, 159, 224
Trump, Donald J., 96, 214, 221
Truth, vii, ix–x, xii–xiv, 2, 7–8, 10, 20, 41–45, 50, 63, 66, 69, 75, 107, 110–117, 119–125, 149, 154–155, 160–162, 166, 168, 172, 195, 202, 214, 216, 219
Turner Johnson, James, 177, 181–182, 184–187, 192, 224

Ukrainian Nonviolent Civilian Defense, 178
United Nations, 28, 35, 82–83, 89, 100–102, 141, 165, 184, 189, 224
Charter, 184, 224
Convention Relating to the Status of Refugees (1951 Refugee Convention), 102
Security Council, 184
Sustainable Development Goals (SDGs), 141
Treaty on the Prohibition of Nuclear Weapons, 189–190, 224
Universal Declaration of Human Rights, 35, 89, 100, 102, 224
Universal Jurisdiction, 194–195,
Utilitarianism, ix, 132
Unwritten Constitution, 39, 147, 205

Veil of ignorance, 51
Vincent, R. J., 25–26, 29, 32–33, 225
Violence, vii, 1–2, 6–7, 9, 11–12, 14–24, 36, 56, 63, 76, 78–79, 85, 89–90, 102, 104, 111, 126, 141, 144, 148, 153–155, 167–

169, 172–174, 176, 178, 186, 192, 197, 199, 203, 206–207, 210, 215–216, 226
definition of, 15-16
direct violence, vii, 16, 19, 21, 23-24, 76, 90, 176
structural violence, vii, 11, 16-19, 21-22, 63, 126, 144
cultural violence, vii, 7, 12, 14, 19-23, 36, 102, 111, 148, 168, 197, 210

Walzer, Michael, ix, 16, 34–35, 42, 47, 70, 76, 80, 88–89, 92, 99, 104, 106, 135–137, 176–179, 182, 185–187, 191–192, 218, 225
War system, 22
Warnke, Jeffrey H., xii, 141, 225
Wasserstrom, Richard A., 177, 187, 206, 209, 217, 225
Watt, A. J., 40, 49, 225
Weimar Republic, 212
Wellman, Christopher Heath, 92, 95, 99, 101, 225
Wenz, Peter S., 142, 225
Werner, M. H., 49, 63, 207, 213, 216
West, Cornel, 146, 168, 175, 178, 207, 217, 225
Whitman, James Q., 97, 225
Williams, Robert E. Jr., 193, 206
Williams, Robert R., 54, 56, 104, 193, 211, 225-226
Wolflink, Alena, 175, 226
Woodhouse, Tom, 219
World Tribunal on Iraq (WTI), 195

Yoder, John Howard, 177, 185–187, 226
Yoo, John, 192, 226
Young, Iris Marion, 17–19, 105, 211, 226

Zadel, Ester van, 193, 218
Ziblatt, Daniel, 154, 158, 160, 215
Zimmermann, Jens, 113, 226
Žižek, Slavoj, 16, 226
Zurn, Christopher, 50, 54–55, 226